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Witnesses on behalf of Interborough Rapid Transit Company:

	Direct	Cross	Redirect	Recross
William F. Reeves	271	296	317	323
			324	
			701	702
George W. Burpee	325	331		
	333	341	370	384
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Harold L. Coe	387			
	833			
Herbert J. Fraser	389	390		
Otis E. Hovey	417	420		
	421	425	430	
William F. Harden	431	434		
	436	438	440	
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Frank D. Allen	442	451		
	506	507		
	991			
Frank B. McCord	508	511	513	513
			514	
Sylvester D. Smith	572			
Michael F. Fox	654			
George Keegan	666	689	692	694
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Amos Schaeffer	764	778	781	782
Frederick William Schoonmaker	815			
Edward D. DeForrest	825	831	832	833
			833	
Robert Huntley	834	855	929	943
			977	979
George H. Pegram	994	998	1007	

Witnesses on behalf of the City of New York:

	Direct	Cross	Redirect	Recross
John C. Brackenridge	458	462		
	466	471	498	502
			785	793
			812	
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Louis Marder	576			
Charles A. Standfast	579	583	589	590
John Bauer	590			
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Gabriel Steinberg	625			
John S. Bruce	626	627		
Henry Brady	950	954	966	968

Exhibits of the City of New York:

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Order appointing Extraordinary Term of Supreme Court (Ex. 1)	235	144 1083
Affidavit of S. Wolfenden, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. Herald on Sept. 17 & 20, 1923 (Ex. 2)	235	1083
Affidavit of Jno. J. Cosgrove, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. Law Journal on Sept. 17 & 20, 1923 (Ex. 3)	235	1084
Affidavit of Albert H. Johannes, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. World on Sept. 17 & 20, 1923 (Ex. 4)	235	1085

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Affidavit of Chas. W. Jaros, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. Times on Sept. 17 & 20, 1923 (Ex. 5)	236	1086 1086
Chap. 788, Laws of 1917 (Ex. 6)	236	1877
Chap. 611, Laws of 1919, amending Chap. 788, Laws of 1917 (Ex. 7)	236	1086 1877
Chap. 635, Laws of 1923, amending Chap. 788, Laws 1917 as amended by Chap. 611, Laws of 1919 (Ex. 8)	236	1087 1877
Resolution of Board of Estimate and Apportionment adopted Dec. 5, 1919 authorizing President of Borough of Manhattan to take up negotiations with Manhattan Railway Co. for removal of tracks, etc., constituting the spur (Ex. 9)	237	1087
Pages 6350 to 6352 inc. of minutes of Board of Estimate and Apportionment of meeting of Nov. 26, 1920, being a letter from President of Borough of Manhattan to Board of Estimate and Apportionment stating that no agreement could be reached between him and railway company as to removal of spur (Ex. 10)	237	1088
Resolution of Board of Estimate and Apportionment adopted Jan'y 14, 1921, requesting Public Service Commission to institute proceeding and conduct hearing to determine matters specified in Chap. 788, Laws of 1917, as amended by Chap. 611, Laws of 1919 (Ex. 11)	238	1094
Order and determination of Public Service Commission, dated Apr. 22, 1921 —Case No. 2582 (Ex. 12)	238	1096

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Certificate issued by Public Service Commission, dated Apr. 22, 1921—Case No. 2582 (Ex. 13)	239	1102
Resolution of Board of Estimate and Apportionment adopted Sept. 30, 1921, directing institution of proceedings to condemn and remove tracks, etc., constituting the spur (Ex. 14)	239	81 1109
Resolution of Board of Estimate and Apportionment adopted June 29, 1923, amending resolution adopted Sept. 30, 1921 (Ex. 15)	240	84 1109
Notice of application of City for order to condemn (Ex. 16)	240	94 1109
Petition of City, ver. July 13, 1923, and rule map attached, for order to condemn (Ex. 16)	240	99 1109
Affidavit of J. Osgood Nichols submitted in opposition to petition of City (Ex. 16)	240	1110
Reply affidavit of Albert T. Swords submitted on behalf of City (Ex. 16)	240	1117
Affidavit of Viertel, of McCormick and of Murty as to publication of notice of application of City for order to condemn in City Record and as to posting same (Ex. 16)	240	123 124 1119
Order of Special Term entered July 18, 1923, granting application of City to condemn (Ex. 16)	240	125 1119
Claim of Manhattan Railway Co. (Ex. 17 for Ident.)	241	129 1119
Claim of Interborough Rapid Transit Co. (Ex. 18 for Ident.)	241	131 1120
Draft Damage Map filed in N. Y. Co. Clerks office on July 19, 1923 (Ex. 19)	241	1120 1888 141
Notice of Trial (Ex. 20)	241	1120

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Detailed statement showing cost to reproduce and depreciated value as of Nov. 1, 1923 of 42nd St. Elevated Spur from Park to 3rd Aves., prepared by Jno. C. Brackenridge (Ex. 22)	468	1121
Estimated cost to reproduce as of Nov. 1, 1923, stairway and canopy for same at Park Ave. and 42nd St., prepared by Jno. C. Brackenridge (Ex. 23)	469	1125
Report of Ticket Sales for 1918 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 24)	577	1126
Report of Ticket Sales for 1919 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 25)	577	1126
Report of Ticket Sales for 1920 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 26)	577	1126
Report of Ticket Sales for 1921 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 27)	577	1126
Report of Ticket Sales for 1922 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 28)	577	1126
Report of Ticket Sales for 1923 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 29)	577	1126
Report of Ticket Sales for January, February, March, and April, 1924, of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 30)	577	1126
Annual Report for 1919 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 31)	578	1126
Annual Report for 1920 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 32)	578	1126

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Annual Report for year 1921 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 33)	578	1126
Annual Report for year 1922 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 34)	578	1126
Annual Report for year 1923 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 35)	578	1126
June monthly reports for the years 1919 to 1923, inc. of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 36)	578	1126
Count of passengers using 42nd St. shuttle at 42nd St., and Park Ave., Nov. 20th and 21st, 1923 (Ex. 37)	580	1129
Tabulation showing results of card canvas of passengers using shuttle trains on 42nd St. Spur of 3rd Ave. Elevated Line, Nov. 21, 1923 (Ex. 38)..	582	1130
Statement showing ticket sales and actual count of tickets deposited in cancelling box at Grand Central Station, 3rd Ave. Line, from Apr. 1 to Apr. 7, 1921, made by Jno. S. Bruce (Ex. 39)	582	1132
Tabulation showing revenues assignable to 42nd St. Elevated Spur for fiscal years (1919 to 1923) ended June 30, prepared by Jno. Bauer (Ex. 40 for Ident; Ex. 40)	598 603	1133
Letter, dated Jan'y 7th, 1924, from J. L. Quackenbush, General Counsel of Interborough Rapid Transit Co. to L. H. LaMotte, containing certain data (Ex. 41)	601	1134
Tabulation showing operating expenses and taxes chargeable against 42nd St. Elevated Spur for each of fiscal		

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years (1919 to 1923) ended June 30th, prepared by Jno. Bauer (Ex. 42 for Ident.; Ex. 42)	603 606	1137
Tabulation showing ticket sales at designated Elevated and Subway stations at 42nd St. from 1900 to 1923, prepared by Jno. Bauer (Ex. 43 for Ident.; Ex. 43)	609 616	1138
Resolution of Board of Estimate and Apportionment adopted Nov. 23, 1923, vesting title herein (Ex. 44)	623	89 1139
Lease, Manhattan Railway Co. and Interborough Rapid Transit Co., dated Jan'y 1, 1903, for 999 years (Ex. 45)	624	1139
Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co. dated Mar. 15, 1913 (Ex. 45A)	624	1181
Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., dated Oct. 22, 1913 (Ex. 45B)	624	1190
Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., dated Feb'y 17, 1916 (Ex. 45C)	624	1196
Sixteen (16) Photographs showing north and south sides of 42nd St. between Park and 3rd Aves. including structures and abutting properties (Exs. 46A to 46P)	626	1204 1884 1892
Order and determination of Transit Commission in Case No. 2704 (Ex. 47)	627	1204
Certificate of Transit Commission in Case No. 2704, pursuant to Sec. 53, Public Service Commission Law (Ex. 48)	627	1210

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Statement showing dates when turnstiles on all lines crossing 42nd St. were placed in operation (Ex. 49)	628	1214
Statement showing ticket sales at 42nd St. Station on 3rd Ave. Line for years 1919 to 1923 and Jan'y, Feb'y, Mar. & Apr., 1924, prepared by Jno. Bauer (Ex. 50)	703	1215
Statement showing ticket sales at 6th Ave. and 42nd St. Elevated for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr. 1924, prepared by Jno. Bauer (Ex. 51)	704	1216
Statement showing ticket sales for 23rd St. Station on 3rd Ave. Elevated Line for years 1922 and 1923, and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 52)	704	1217
Statement showing ticket sales for 42nd St. Station on 2nd Ave. Elevated Line for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 53)	704	1218
Statement showing ticket sales for 34th St. Station on 3rd Ave. Elevated Line for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 54)	704	1219
Statement showing subway ticket sales for Grand Central Subway Station at 42nd St. for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 55) ..	704	1220
Statement showing ticket sales for Times Square Subway Station at 42nd St. for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 56)	705	1220
Statement showing monthly ticket sales at Grand Central Station of Elevated		

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Division of I. R. T. Co. for fiscal years 1920 to 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, ended June 30th, prepared by Jno. Bauer (Ex. 57)	705	1221
Chart showing monthly ticket sales or turnstile entries at Grand Central Station of Elevated divisions of I. R. T. Co., registered July, 1919, to demolition, prepared by Jno. Bauer (Ex. 58)	755	1221 1894
Certificate of Transit Commission in Case No. 2704, pursuant to Chap. 635, Laws of 1923 (Ex. 59)	782	1222
Tabulated statement prepared by Jno. C. Brackenridge showing schedule of operation, estimated earnings and expenses—value of 42nd St. Elevated Spur as railroad in operation as part of entire Manhattan Elevated system (Ex. 60)	789	1228
Detailed estimated cost of changes required at 42nd St. and 3rd Ave. by removal of spur made by Jno. C. Brackenridge (Ex. 61A)	1035	1230
Statement prepared by Jno. Bauer showing compilation of monthly ticket sales of 3rd Ave. Elevated at Grand Central and 42nd St. and 3rd Ave., years 1922, 1923 and Jan'y, Feb'y, Mar. and Apr., 1924 (Ex. 62 for Ident.; Ex. 62)	1042 1043	1235
Statement prepared by Jno. Bauer showing comparison of I. R. T. elevated ticket sales, 3rd Ave. Line at 42nd St. and at 34th St. for years 1923 and 1924 (Ex. 63 for Ident.; Ex. 63)	1043	1236
Statement prepared by Jno. Bauer showing tabulation of ticket sales, 3rd Ave. Line at 42nd St., Grand Central		

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and 34th St. from Jan'y, 1919 to	1043	
Aug. 1925 (Ex. 64 for Ident.; Ex. 64)	1046	1237
Statement prepared by Jno. Bauer showing comparison of ticket sales, 3rd Ave. Line at 42nd St. and at 34th St. for first seven months in 1923, 1924	1046	
and 1925 (Ex. 65 for Ident.; Ex. 65)	1047	1238
Photograph of Station of 3rd Ave. Elevated Road at 42nd St. looking east after removal of Spur but before station improvements had been		1238 1884
made (Ex. 66)	1065	1896
Photograph of station of 3rd Ave. Elevated Road at 42nd St. looking east from a point west after station improvements had been made (Ex. 67)	1065	1238 1884 1898
Photograph of station of 3rd Ave. Elevated Road at 42nd St. looking west from east of station after stairway at northeast corner had been constructed (Ex. 68)	1065	1238 1884 1900
Stipulation covering certain facts in case (Ex. 69)	1067	1239

Exhibits of Interborough Rapid Transit Company:

Extracts from Vols. 1 and 2 entitled: Manhattan Railway Company; organization; franchises and contracts,		1242
dated Jan'y 1, 1918 (Ex. "A")	255	1877
Schedule entitled "In re condemnation 42nd Street Spur — Documentary		1618
proof of title" (Ex. "B")	255	1877
Extracts from volume entitled Statutes and Documents affecting the elevated railways in City of New York (Ex.		1619
"C")	256	1877
Plan showing route of N. Y. R. R. in 42nd St. between Third Ave. and Grand Central Station, etc.; approved as per resolution, dated Dec. 30, 1879 (Ex.		1642
"D")	264	1902

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Resolution of Board of Estimate and Apportionment adopted Oct. 19, 1923, directing removal of columns from street to curb (Ex. "E")	265	1642
Resolution of Board of Estimate and Apportionment adopted Oct. 19, 1923, directing removal of stairway at Park Ave. and 42nd St. (Ex. "F")	265	1644
Proposed plan of station at 42nd St. account of removal of 42nd St. branch (Drawing No. 22941), dated Aug. 22, 1923 (Ex. "G")	330	1645 1904 1645
Nineteen (19) Photographs showing structures and abutting properties (Exs. "H-1" to "H-19")	388	1884 1906 1908
Twenty-four (24) Photographs showing structures and abutting properties (Exs. "H-20" to "H-38" and "H-42" to "H-46")	389	1646 1884 1906 1908
Conveyance and Release, Julia E. Ford, *et al.*, to Interborough Rapid Transit Co., N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-1")	446	1646
Conveyance and Release, 42nd St., Manhattanville and St. Nicholas Ave. Railway Co. to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-2")	446	1651
Conveyance and Release, Manhattan Storage and Warehouse Co. to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-3")	446 447	1656
Conveyance and Release, Harriette W. Goelet, *et al.*, to Interborough Rapid Transit Co., N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-4")	446 447	1660
Conveyance, Dorothy L. Laimbeer, etc., to Manhattan Railway Co. and N. Y. El. R. R. Co. (Ex. "J-5")	446 447	1665

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Conveyance and Release, Alethea H. Weeks, *et al.*, to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-6")	446 447	1667
Conveyance and Release, Thos. B. Winthrop and wife to Manhattan Railway Co. (Ex. "J-7")	446 447	1672
Conveyance, J. Frederic Kernochan, etc., to Manhattan Railway Co. (Ex. "J-8")	446 447	1676
Conveyance, Harriet R. McKim to Manhattan Railway Co. (Ex. "J-9")	446 447	1682
Conveyance and Release, Jas. W. Pinchot to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-10")	446 447	1686
Conveyance and Release, Cooper Union for Advancement of Science and Art, *et al.*, to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-11")	446 447	1691
Conveyance and Release, Mary R. Goelet, *et al.*, to Interborough Rapid Transit Co., N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-12")	446 447	1697
Conveyance and Release, Jas. Hernon to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-13")	446 447	1703
Conveyance and Release, Alice M. O'Brien, etc., to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-14")	446 447	1707
Conveyance and Release, Margaret J. Westcott to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-15")	446 447	1712
Conveyance and Release, Geo. Rothmann and wife to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-16")	446 447	1717
Memo. 42nd St. Spur—Franchise Value (Ex. "K" for Ident.; Ex. "K")	527 653	1720
Chart showing total revenue passengers		

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carried by Rapid Transit Railways, N. Y. City, for fiscal years (1880, 1890, 1900 to 1923) ended June 30		1740
(Ex. "K-1")	527	1910
Chart showing total revenue passengers carried by I. R. T. for fiscal years (1880, 1890, 1900 to 1923) ended		1740
June 30 (Ex. "K-2")	527	1912
Chart showing ticket sales on 3rd Ave. Elevated Line for fiscal years (1910		1740
to 1923) ended June 30 (Ex. "K-3")	527	1914
Chart showing tickets sold at Rapid Transit Stations, 42nd St., N. Y. City, for fiscal years (1900, 1902, 1904, 1906, 1908, 1910, 1912, 1914, 1916, 1918, 1920 & 1922), ended June 30		1740
(Ex. "K-4")	527	1916
Chart showing total ticket sales for years 1922 (June to Dec.), 1923 (Jany. to Dec.) and 1924 (Jany. to Dec.)		1740
(Ex. "K-5")	527	1918
Chart showing tickets sales at 42nd St. Spur, 42nd St. Station, 3rd Avenue Line and combined Spur and 3rd Ave. stations for years 1922, 1923 and		1740
1924 (Jany. to Nov.) (Ex. "K-6")	527	1920
Chart showing ticket sales at 42nd. St. Spur, 42nd St. Station 3rd Ave. Line and combined Spur and 3rd Ave. stations for fiscal years (1900 to 1923)		1740
ended June 30th (Ex. "K-7")	527	1922
Chart showing per cent. increase in total ticket sales for years ended with months indicated over previous 12		1740
months period (Ex. "K-8")	527	1924
Cost of operating 42nd Street Spur (Ex. "L")	570	1741
Tabulation of Geo. W. Burpee's testimony on value (Ex. "M")	575	1745

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Comparison of estimates, 42nd St. Spur (Ex. "M-1")	575	1748
Statement of ticket sales from 1913 to 1919, 38th St. and 42nd St. at 6th Ave. (Ex. "N")	693	1748
Map showing routes of Interborough Rapid Transit Co. (Ex. "O")	703	1749 1926
Order confirming report of Commissioners *re* Woolsey, *et al.*, in condemnation proceedings to acquire street easements (Ex. "P")	784	1749
Volume entitled Statutes and Documents affecting Elevated Railroads in City of New York (Ex. "Q")	785	1619 1755 1877
Fourteen (14) Photographs showing structure before spur demolition (Exs. "R" and "R-1" to "R-13")	834	1755 1884 1928
Seventeen (17) Photographs of properties after the structure removal (Exs. "S" and "S-1" to "S-16")	834	1756 1884 1930
Deed of easement, Manhattan Railway Co., *et al.*, to The 25 Broadway Corporation of 24 State St.; rec. Apr. 5, 1920, in L. 3146, p. 380 (Ex. "T")	930	1756
Map showing plottage of property as of Dec. 7, 1923 (Ex. "U")	931	1759 1932
Pamphlet of Division of Franchises of Board of Estimate and Apportionment *re* charges for space in street (Ex. "W")	979	1760
Conveyance and Release, Wm. and Margaret Volk to Manhattan Railway Co. (Ex. "X")	993	1765
Conveyance and Release, Rosewin Realty Co. to Manhattan Railway Co. (Ex. "Y")	994	1769
Extracts from minutes of proceedings before Public Service Commission on "Application of Board of Estimate and Apportionment relative to East		

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42nd Street Spur"—Case No. 2582 (Ex. "Y-1")	1036	1775
(Of Claimants' Exhibit Y[1], pages 1775 to 1777, 1784 to 1793 inc. of the record, being the testimony of Forest, of Bernstein, of Doino, of Schaeffer, of O'Connor and of Ryan, are printed at the request of the claimants and pages 1778 to 1783, 1793 to 1869 inc., of the record, being the testimony of McCue, of Brown, of Knox, of Meikleham, of Bernheim, of Bauer and of Schaeffer, are printed at the request of the City.)		
Statement showing detailed items of costs of work under Plan No. 22941 marked Ex. "G" (Ex. "Z")	1037	1870
Page summarizing itemized elements of cost of reconstruction work at 3rd Ave. and 42nd St. (Ex. "BB")	1041	1872
Statement showing passenger traffic by months from July, 1921, to and including June, 1925, at 42nd St. on 3rd Ave. Line, Grand Central Station, 3rd Ave. Line, etc. (Ex. "CC")	1063	1873
Statement showing passenger traffic by months from July, 1921, to and including June, 1925, at 34th St. Station on 3rd Ave. and 2nd Ave. Lines, 47th St. Station on 3rd Ave. Line and 50th St. Station on 2nd Ave. Line (Ex. "DD")	1064	1875
Exhibit of Manhattan Railway Company:		
Sheet of Earnings (Ex. "AA")	1041	1879

Exhibits of the Central Union Trust Company of New York:

Consolidated Mortgage, Manhattan Railway Co. & Metropolitan El. R. R. Co. to Central Union Trust Co., as Trustee, dated Feb. 26, 1890; rec. on Feb. 26, 1890, in L. 2538, p. 157 (Ex. "A") 1066 1881

Supplemental Indenture, Manhattan Railway Co. to Central Union Trust Co., as Trustee, dated June 13, 1899; rec. on July 12, 1899, in L. 7, p. 265 (Ex. "B") 1067 1881

Exhibit of the Equitable Trust Company of New York:

Second Mortgage, Manhattan Railway Co. to Equitable Trust Co. of N. Y., dated June 1, 1913; rec. on Mar. 2, 1916, in L. 26, p. 222, etc. (Ex. "A") 1067 1881

New York Supreme Court

FIRST JUDICIAL DEPARTMENT,

NEW YORK COUNTY.

In the Matter of the Application of the City of New York, relative to acquiring title to the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.

Statement Under Rule 234.

This proceeding was instituted by resolutions of the Board of Estimate and Apportionment of the City of New York adopted September 30, 1921, and June 29, 1923.

Upon petition of the City of New York, verified July 13, 1923, the order to condemn was made herein, dated July 18, 1923, and entered July 18, 1923.

The Tentative Decree of the Supreme Court as to awards for damage and assessments for benefit, dated April 4, 1927, was filed April 11, 1927.

Pursuant to published notice thereunder The City of New York on April 27, 1927; Interborough Rapid Transit Company on May 2, 1927; Manhattan Railway Company on May 2, 1927; The Equit-

able Trust Company of New York on May 2, 1927; Pershing Square Building Corporation on May 2, 1927; The New York Central Railroad Company, The New York and Harlem Railroad Company and The New York State Realty and Terminal Company on May 2, 1927; Seward W. Ehrich, Inc. on April 30, 1927; Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation on May 2, 1927; Manhattan Storage and Warehouse Company on May 2, 1927, Cooper Union for the Advancement of Science and Art on May 2, 1927; Corn Exchange Bank on April 27, 1927; Bowman Biltmore Hotels Corporation (Hotel Commodore), Bowman Biltmore Hotels Corporation (Hotel Biltmore), B. L. M. Bates Corporation (Hotel Belmont), Bates-Bowman Corporation (Murray Hill Hotel), The Bowery Savings Bank, on April 28, 1927; Rogers Peet Company, Princeton Club of New York, Fritz G. Schmidt, Office Realty Corporation, William Volk, 202-204 East 42nd St. Corporation, Vanderbilt Avenue Building Corporation, Centerminal Corporation, F. & S. Rockaway Restaurant, Inc., Julius Tishman & Sons, Inc. Frederick Brown, James B. Ford, on April 29, 1927; Anahma Realty Corporation, D. A. Schulte, Inc., The Oceanic Investing Company, Borden Realty Corporation on April 30, 1927; R-W Realty Company, Inc., Trustees of the Estate of James Kelley, Deceased, Guaranty Trust Company of New York as substituted Trustees of the Estate of John Curry, Deceased, Childs Company, J. Chr. G. Hupfel, J. Chr. G. Hupfel Co. Inc., J. Homer Cudmore, Alex Taylor & Co. Inc., Henry Hof, 140 East 27th Street Corporation and Carbide and Carbon Realty Co., on May 2, 1927, filed objections to the

aforesaid Tentative Decree, and Bowman Biltmore Hotels Corporation (Hotel Commodore), Corn Exchange Bank, B. L. M. Bates Corporation (Hotel Belmont), Bates-Bowman Corporation (Murray Hill Hotel), Guaranty Trust Co. of New York, as substituted Trustee of the Estate of John Curry, deceased, J. Chr. G. Hupfel Co., Inc., Bowman Biltmore Hotels Corp. (Hotel Biltmore), The Bowery Savings Bank, Rogers Peet Company, Princeton Club of New York, Fritz G. Schmidt, Office Realty Corporation, William Volk, 202-204 East 42nd Street Corporation, Vanderbilt Avenue Building Corporation, Centerminal Corporation, F. & S. Rockaway Restaurant, Inc., Julius Tishman & Sons, Inc. Frederick Brown, James B. Ford, Anahma Realty Corporation, D. A. Schulte, Inc., The Oceanic Investing Company, Borden Realty Corporation, The R-W. Realty Company, Inc., Trustees of the Estate of James Kelley, deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, Alex Taylor & Co., Inc., Henry Hof, 140 East 27th Street Corporation and Carbide & Carbon Realty Co., Inc., on October 24, 1927, filed amended objections to the aforesaid Tentative Decree.

The Final Decree of the Supreme Court, dated February 28, 1928, was filed March 14, 1928.

The names of the parties are: George P. Nicholson, Corporation Counsel of the City of New York, appearing as attorney for The City of New York; James L. Quackenbush, appearing as attorney for the Interborough Rapid Transit Company; Murray, Aldrich & Roberts, appearing as attorneys for the Manhattan Railway Company; George Welwood Murray, appearing as attorney for the Equitable Trust Company of New York; Edmund W. Van Voorhis, appearing as attorney for Pershing

Square Building Corporation; Alex S. Lyman, appearing as attorney for The New York Central Railroad Company, The New York & Harlem Railroad Company and The New York State Realty and Terminal Company; Hollander & Bernheimer, appearing as attorneys for Seward W. Ehrich, Inc.; Shearman & Sterling, appearing as attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation; Middlebrook & Sincerbeaux, appearing as attorneys for Manhattan Storage & Warehouse Company; Parsons, Closson & McIlvaine, appearing as attorneys for Cooper Union for the Advancement of Science and Art; and Page & Page, appearing as attorneys for Bowman Biltmore Hotels Corporation (Hotel Commodore), Corn Exchange Bank, B. L. M. Bates Corporation (Hotel Belmont), Bates-Bowman Corporation (Murray Hill Hotel), Guaranty Trust Co. of New York, as substituted Trustee of the Estate of John Curry, Deceased, J. Chr. G. Hupfel Co., Inc., Bowman Biltmore Hotels Corp., (Hotel Biltmore), The Bowery Savings Bank, Rogers Peet Company, Princeton Club of New York, Fritz G. Schmidt, Office Realty Corporation, William Volk, 202-204 East 42nd Street Corporation, Vanderbilt Avenue Building Corporation, Centerminal Corporation, F. & S. Rockaway Restaurant, Inc., Julius Tishman & Sons, Inc., Frederick Brown, James B. Ford, Anahma Realty Corporation, D. A. Schulte, Inc., The Oceanic Investing Company, Borden Realty Corporation, The R-W. Realty Company, Inc., Trustees of the Estate of James Kelley, Deceased, Childs Company, J. Chr. G. Hupfel, J. Homer Cudmore, Alex Taylor & Co., Inc., Henry Hof, 140 East 27th Street Cor-

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poration and Carbide & Carbon Realty Co., Inc., and Davies, Auerbach and Cornell appearing as attorneys for The Central Union Trust of New York.

There has been no change of parties or attorneys.

Notice of Appeal of The City of New York to Appellate Division.

New York Supreme Court, First Judicial District, County of New York.

14

In the Matter of the Application of The City of New York relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned in East 42nd Street constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

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Sirs: Please take notice, that The City of New York hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from that part or portion of the Final Decree of the Supreme Court, New York County, made by Mr. Justice James O'Malley, dated February 28, 1928, and entered and filed in the Office of the Clerk of the County of New York on

March 14, 1928, in the above entitled matter, which makes and contains an award of $975,438.00 principle and $247,273.53 interest to the Manhattan Railway Company for Damage Number 1 as shown by the said Final Decree and by the damage maps attached or annexed thereto; and The City of New York appeals from each and every part of the said Final Decree in so far as the same relates to and covers and contains the said award of $975,438.00, principle and $247,273.53 interest made to the Manhattan Railway Company for Damage No. 1.

Dated, New York, April 12, 1928.

Yours, etc., George P. Nicholson, Corporation Counsel, Attorney for The City of New York, Office and Post Office Address: Municipal Building, Borough of Manhattan, New York City, N. Y.

To: Clerk of the County of New York. Messrs. Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company, owner and lessor, No. 37 Wall Street, Borough of Manhattan, New York City, N. Y. James L. Quackenbush, Esq., Attorney for the Interborough Rapid Transit Company, lessee of the Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, New York City, N. Y. Messrs. Davies, Auerbach and Cornell, Attorneys for the Central Union Trust Company of New York, holder of first Mortgage on the Manhattan Railway Company, as Trustees, No. 34 Nassau Street, Borough of Manhattan, New York City, N. Y. George Welwood Murray, Esq., Attorney for The Equitable Trust Company of New York, holder of second Mortgage on the Manhattan Railway Company, as Trustees, No. 37 Wall Street, Borough of Manhattan, New York City, N. Y.

Notice of Appeal of Manhattan Railway Co. to Appellate Division.

Supreme Court: New York County.

[SAME TITLE]

Sirs: Please take notice that the Manhattan Railway Company, as owner and lessor of the property taken in condemnation in the above entitled proceeding, and an objector herein, hereby appeals to the Appellate Division of the Supreme Court, First Department, from the final decree of the Extraordinary Special Term of the Supreme Court, New York County, dated the 28th day of February, 1928, and entered in the office of the Clerk of the County of New York on the 14th day of March, 1928, and from each and every part of said decree, as well as from the whole thereof.

Dated, New York, April 13, 1928.

Yours, &c., Murray, Aldrich & Roberts, Attorneys for Manhattan Railway Company, 15 Broad Street, New York, N. Y.

To: William T. Collins, Esq., County Clerk. George P. Nicholson, Esq., Corporation Counsel. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Co., 165 Broadway, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Company, 34 Nassau Street, New York, N. Y. George Welwood Murray, Esq., Attorney for The Equitable Trust Company of New York, 15 Broad Street, New York, N. Y. Alexander S. Lyman, Esq., Attorney for New York Central Railroad Company, New York and Harlem Railroad Company and New York State Realty & Terminal Co., Room 1142, 466 Lexington

Avenue, New York, N. Y. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation, (Hotel Commodore), Bowery Savings Bank, William Volk, D. A. Schulte, Inc., 55 Liberty Street, New York, N. Y. Middlebrook & Sincerbeaux, Esqs., Attorneys for Manhattan Storage & Warehouse Co., 57 William Street, New York, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, 1 Park Avenue, New York, N. Y. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, Owner of Benefit Lot No. 15, 52 William Street, New York, N. Y.

Notice of Appeal of Interborough Rapid Transit Co. to Appellate Division.

New York Supreme Court, New York County.

[SAME TITLE]

Sirs: Please take notice that Interborough Rapid Transit Company, claimant herein, hereby appeals to the Appellate Division of the Supreme Court for the First Department, from the final decree of this court, dated February 28, 1928, and filed and entered in the office of the Clerk of the County of New York on the 14th day of March, 1928, wherein and whereby it is among other things Adjudged that the amount of $1,222,711.53 be awarded to Manhattan Railway Company as just compensation for damages sustained by it in this proceeding and said Interborough Rapid Transit Company appeals from each and every part of said final decree as well as the whole thereof.

Dated, New York, April 12, 1928.

Yours, etc., James L. Quackenbush, Attorney for

claimant-appellant, Interborough Rapid Transit Company, 165 Broadway, Borough of Manhattan, New York City.

To: William T. Collins, Esq., Clerk of New York County; and George P. Nicholson, Esq., Corporation Counsel, Attorney for the City of New York. Murray, Aldrich & Roberts, Esqs., Attorneys for Manhattan Railways Company. Davies, Auerbach & Cornell, Esqs., Attorneys for the Central Union Trust Company. George Welwood Murray, Esq., Attorney for the The Equitable Trust Company of New York.

Notice of Appeal of Equitable Trust Co. of N. Y. to Appellate Division.

Supreme Court, New York County.

[SAME TITLE]

Sirs: Please take notice that The Equitable Trust Company of New York, as Trustee under a Deed of Trust of the Manhattan Railway Company dated June 1, 1913, and an objector herein, hereby appeals to the Appellate Division of the Supreme Court, First Department, from the final decree of the Extraordinary Special Term of the Supreme Court, New York County, dated the 28th day of February, 1928, and entered in the office of the Clerk of the County of New York on the 14th day of March, 1928, and from each and every part of said decree, as well as from the whole thereof.

Dated: New York, April 13, 1928.

Yours, &c., George Welwood Murray, Attorney for The Equitable Trust Company of New York, as Trustee under a Deed of Trust of the Manhat-

tan Railway Company dated June 1, 1913, 15 Broad Street, New York, N. Y.

To: William T. Collins, Esq., County Clerk. George P. Nicholson, Esq., Corporation Counsel. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Co., 165 Broadway, New York, N. Y. Murray, Aldrich & Roberts, Esqs., Attorneys for Manhattan Railway Company, 15 Broad Street, New York, N. Y. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Company, 34 Nassau Street, New York, N. Y. Alexander S. Lyman, Esq., Attorney for New York Central Railroad Company, New York and Harlem Railroad Company and New York State Realty & Terminal Co., Room 1142, 466 Lexington Avenue, New York, N. Y. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation (Hotel Commodore), Bowery Savings Bank, William Volk, D. A. Schulte, Inc., 55 Liberty Street, New York, N. Y. Middlebrook & Sincerbeaux, Esqs., Attorneys for Manhattan Storage & Warehouse Co., 57 William Street, New York, N. Y. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, 1 Park Avenue, New York, N. Y. Parsons, Closson & McIlvaine, Esqs., Attorneys for Cooper Union for the Advancement of Science and Art, Owner of Benefit Lot No. 15, 52 William Street, New York, N. Y.

Notice of Appeal of Bowman Biltmore Hotels Corporation (Hotel Commodore), et al. to Appellate Division.

New York Supreme Court, New York County.

[SAME TITLE]

Please take notice that Bowman Biltmore Hotels Corporation (Hotel Commodore); Corn Exchange Bank; Bowman Biltmore Hotels Corporation (Hotel Biltmore); B. L. M. Bates Corporation (Hotel Belmont); Bates-Bowman Corporation (Murray Hill Hotel); Guaranty Trust Company of New York as substituted Trustee of the Est. of John Curry, Deceased; J. Chr. G. Hupfel Co., Inc.; The Bowery Savings Bank; Rogers Peet Company, Princeton Club of New York; Fritz G. Schmidt; Office Realty Corporation; William Volk; 202-204 East 42nd Street Corporation; Vanderbilt Avenue Building Corporation; Centerminal Corporation; F. & S. Rockaway Restaurant, Inc.; Julius Tishman & Sons, Inc.; Frederick Brown; James B. Ford; Anahma Realty Corporation; D. A. Schulte, Inc.; The Oceanic Investing Company; Borden Realty Corporation; R-W Realty Company, Inc.; Trustees of the Estate of James Kelley, Deceased; Childs Company; J. Chr. G. Hupfel; J. Homer Cudmore; Alex Taylor & Co., Inc.; Henry Hof; 140 East 27th Street Corporation and Carbide & Carbon Realty Co., Inc., objectors herein and as owners or lessees of property assessed for benefit in the above entitled proceeding, and each of them hereby appeal to the Appellate Division of the Supreme Court, First Department, from the Final Decree of the Supreme Court of the State of New York, New York County made herein, dated the 28th day of

34 February, 1928 and entered in the office of the Clerk of the New York County on the 14th day of March 1928, and from each and every part of said Final Decree as well as from the whole thereof.

Dated, New York, April 5th, 1928.

Yours etc., Page & Page, Attorneys for above named Parties Appellants, Office & P. O. Address, 55 Liberty Street, Borough of Manhattan, New York City.

To the Clerk of the County of New York. Hon.
35 George P. Nicholson, Corporation Counsel of the City of New York. Messrs. Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company, owner and lessor, No. 37 Wall Street, Borough of Manhattan, New York City, N. Y. James L. Quackenbush, Esq., Attorney for the Interborough Rapid Transit Company, lessee of the Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, New York City, N. Y. Messrs. Davies, Auerbach and Cornell, Attorneys for the Central Union Trust Company of New York, holder of First Mortgage on the Manhattan
36 Railway Company, as trustees, No. 34 Nassau Street, Borough of Manhattan, New York City, N. Y. George Welwood Murray, Esq., Attorney for The Equitable Trust Company of New York, holder of second Mortgage on the Manhattan Railway Company, as Trustee, No. 37 Wall Street, Borough of Manhattan, New York City, N. Y.

Notice of Appeal of N. Y. Central R. R. Co., et al. to Appellate Division. 37

Supreme Court, New York County.

[Same Title]

The New York Central Railroad Company, the New York and Harlem Railroad Company and the New York State Realty and Terminal Company, objectors herein and as owners or lessees of the property assessed for benefit in the above entitled proceeding, and each of them, hereby appeal to the Appellate Division of the Supreme Court, First Department, from the Final Decree of the Supreme 38
Court of the State of New York, New York County, made herein, dated the 28th day of February, 1928, and entered in the office of the Clerk of New York County on the 14th day of March, 1928 and from each and every part of said Final Decree as well as from the whole thereof.

Dated, New York, April 6th, 1928.

Yours etc. Alex. S. Lyman, Attorney for The New York Central Railroad Company, New York and Harlem Railroad Company and New York State Realty and Terminal Company, Office & P. O. Address, Room 1142, No. 466 Lexington Ave., Borough 39
of Manhattan, New York City.

To: Clerk of the County of New York. Hon. George P. Nicholson, Corporation Counsel of the City of New York. Messrs. Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company, owner and lessor, No. 37 Wall Street, Borough of Manhattan, New York City, N. Y. James L. Quackenbush, Esq., Attorney for the Interborough Rapid Transit Company, lessee of the

Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, New York City, N. Y. Messrs. Davies, Auerbach and Cornell, Attorneys for the Central Union Trust Company of New York, holder of the First Mortgage on the Manhattan Railway Company, as trustees, No. 34 Nassau Street, Borough of Manhattan, New York City, N. Y. George Welwood Murray, Esq., Attorney for The Equitable Trust Company of New York, holder of second Mortgage on the Manhattan Railway Company, as Trustee, No. 37 Wall Street, Borough of Manhattan, New York City, N. Y.

Notice of Appeal of Pershing Square Building Corporation to Appellate Division.

New York Supreme Court, New York County.

[SAME TITLE]

Please take notice, that Pershing Square Building Corporation, a domestic corporation having its principal office at No. One Park Avenue, Borough of Manhattan, City of New York, being the owner of the premises situated on the easterly side of Park Avenue, extending from the southerly side of East 42nd Street to the northerly side of East 41st Street, the easterly boundary of which is a line drawn parallel with and distant 125 feet 6 inches easterly from the easterly side of Park Avenue, in the Borough of Manhattan, City of New York, known as and by the street number 100 East 42nd Street, and designated in this proceeding as Lot 1, Block 1296, Plot No. 55 on the Map for Assessment for Benefits, hereby appeals to the Appellate Division of the Supreme Court for the First Department, from the Final Decree of this Court entered herein in the office of the Clerk of the County of

New York on or about the 14th day of March, 1928, whereby it was adjudged that the sums of money awarded for the damage sustained by reason of this proceeding, together with interest on the awards for the property acquired by the City of New York herein, with interest, amount to One Million Two Hundred Twenty-two Thousand, Seven Hundred and Eleven Dollars and Ffity-three cents ($1,222,711.53), and whereby it was also adjudged that the sums of money assessed for benefit by reason of this improvement amount to the sum of One Million Two Hundred and Eighty-two Thousand, Eight Hundred and Forty-five Dollars and Fifty-five cents ($1,282,845.55), which is imposed upon the real property within the assessment area fixed for this proceeding by the Board of Estimate and Apportionment by Resolution adopted June 29th, 1923, and whereby it was further adjudged that the amount of One Million Two Hundred Twenty-two Thousand, Seven Hundred and Eleven Dollars and Fifty-three cents ($1,222,711.53) be awarded to Manhattan Railway Company as just compensation which said Manhattan Railway Company is entitled to receive from The City of New York for damages sustained by it in this proceeding, and whereby it was further adjudged that the amount to be paid to The City of New York by Pershing Square Building Corporation as the owner of Lot 1, Block 1296, Plot No. 55 on the Map for Assessment for Benefits herein, for the benefit and advantage derived by said plot by reason of the said improvement, as shown by the tabular abstract of assessments for benefit attached to said decree, is the sum of Sixty-Seven Thousand Eight Hundred and Nineteen Dollars and Fifty-three cents ($67,819.53) and that said Pershing Square

46 Building Corporation appeals from each and every part of said final decree, as well as from the whole thereof.

Dated, New York, March 31st, 1928.

Edmund W. Van Voorhis, Attorney for Appellant-Pershing Square Building Corporation, Office and Post Office Address: One Park Avenue, Borough of Manhattan, New York City.

To the: Clerk of the County of New York, and George P. Nicholson, Esq., Corporation Counsel of
47 The City of New York. Murray, Aldrich & Roberts, Attorneys for the Manhattan Railway Company. James L. Quackenbush, Esq., Attorney for The Interborough Rapid Transit Company of New York. Davies, Auerbach & Cornell, Attorneys for The Central Union Trust Company of New York. George Welwood Murray, Esq., Attorney for The Equitable Trust Company of New York.

Notice of Appeal of Robt. W. Goelet, et al. to Appellate Division.

New York Supreme Court, New York County.

48 [SAME TITLE]

Sirs: Please take notice that Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation, objectors herein, and as owners or lessees of property assessed for benefit in the above entitled proceeding, and each of them hereby appeal to the Appellate Division of the Supreme Court, First Department, from the Final Decree of the Supreme Court of the State of New York, New York County, made herein, dated the 28th day of February, 1928, and entered in the of-

fice of the Clerk of the County of New York on the 14th day of March, 1928, and from each and every part of said Final Decree as well as from the whole thereof.

Dated, New York, April 14, 1928.

Yours, etc., Shearman & Sterling, Attorneys for above-named parties, appellants, 55 Wall Street, Borough of Manhattan, New York City.

To: The Clerk of the County of New York. Hon. George P. Nicholson, Corporation Counsel of the City of New York. Messrs. Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company, owner and lessor, No. 37 Wall Street, Borough of Manhattan, New York City, N. Y. James L. Quackenbush, Esq., Attorney for the Interborough Rapid Transit Company, lessee of the Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, New York City, N. Y. Messrs. Davies, Auerbach and Cornell, Attorneys for the Central Union Trust Company of New York, holder of First Mortgage on the Manhattan Railway Company, as trustees, No. 34 Nassau Street, Borough of Manhattan, New York, N. Y. George Welwood Murray, Esq., Attorney for The Equitable Trust Company of New York, holder of second Mortgage on the Manhattan Railway Company, as Trustee, No. 37 Wall Street, Borough of Manhattan, New York, N. Y.

52 **Notice of Appeal of Cooper Union for Advancement of Science and Art to Appellate Division.**

Supreme Court, New York County.

[SAME TITLE]

Please take notice that Cooper Union for the Advancement of Science and Art hereby appeals to the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, from the final decree in this proceeding, dated February 28, 1928, and entered
53 and filed herein in the office of the Clerk of the County of New York, on March 14, 1928, and from each and every part thereof.

Dated, April 13, 1928.

Parsons, Closson & McIlvaine, Attorneys for Cooper Union for the Advancement of Science and Art, Owner of Benefit Lot No. 15, 52 William Street, Borough of Manhattan, New York City.

To: William T. Collins, Esq., County Clerk. George P. Nicholson, Esq., Corporation Counsel. Murray, Aldrich & Roberts, Esqs., Attorneys for
54 Manhattan Railway Company, 37 Wall Street, New York City. James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Co., 165 Broadway, New York City. Davies, Auerbach & Cornell, Esq., Attorneys for Central Union Trust Company, 31 Nassau Street, New York. George Welwood Murray, Esq., Attorney for Equitable Trust Company, 37 Wall Street, New York City. Alexander S. Lyman, Esq., Attorney for New York Central Railroad Company, New York and Harlem Railroad Company and New York State Realty & Terminal Co., Room 1142, 466 Lexington Ave., New York

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City. Page & Page, Esqs., Attorneys for Bowman Biltmore Hotels Corporation (Hotel Commodore), Bowery Savings Bank, William Volk, D. A. Schulte, Inc., 55 Liberty St., New York City. Middlebrook & Sincerbeaux, Esqs., Attorneys for Manhattan Storage & Warehouse Co., 57 William Street, New York City. Edmund W. Van Voorhis, Esq., Attorney for Pershing Square Building Corporation, 1 Park Avenue, New York City.

Notice of Appeal of Manhattan Storage & Warehouse Co. to Appellate Division.

56

New York Supreme Court, First Judicial District, County of New York.

[SAME TITLE]

Sirs: Please take notice that the Manhattan Storage and Warehouse Company, an objector herein and as owner or lessee of property assessed for benefit in the above entitled proceeding hereby appeals to the Appellate Division of the Supreme Court, First Department, from the final decree of the Supreme Court of the State of New York in New York County made herein dated the twenty-eighth day of February, 1928 and entered in the Office of the Clerk of the County of New York on the fourteenth day of March, 1928 and from each and every part of said final decree as well as from the whole thereof.

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Dated: New York, N. Y., April 12, 1928.

Yours, etc., Middlebrook & Sincerbeaux, Attorneys for Appellant Manhattan Storage and Warehouse Company, Office & Post Office Address: 57 William Street, Borough of Manhattan, City of New York.

58 *Notice of Appeal of Seward W. Ehrich, Inc.*

To: The Clerk of the County of New York. Honorable George P. Nicholson, Corporation Counsel, of the City of New York, Municipal Building, Borough of Manhattan, New York City. Messrs. Murray, Aldrich & Roberts, Attorneys for the Manhattan Railway Company, owner and lessor, No. 37 Wall Street, Borough of Manhattan, City of New York. James L. Quackenbush, Esq., Attorney for the Interborough Rapid Transit Company, lessee of the Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, City of New
59 York. Messrs. Davies, Auerbach & Cornell, Attorneys for the Central Union Trust Company of New York, holder of first mortgage on the Manhattan Railway Company, as Trustees, No. 34 Nassau Street, Borough of Manhattan, City of New York. George Welwood Murray, Esq., Attorney for the The Equitable Trust Company of New York, holder of second mortgage on the Manhattan Railway Company, as Trustees, No. 37 Wall Street, Borough of Manhattan, City of New York.

Notice of Appeal of Seward W. Ehrich, Inc.
60 **to Appellate Division.**

Supreme Court of The State of New York, County of New York.

[SAME TITLE]

Sirs: Please to take notice that Seward W. Ehrich, Inc., objector herein and as owner of property assessed for benefit in the above entitled proceeding, hereby appeals to the Appellate Division of the Supreme Court, First Department from the final decree of the Supreme Court of the State of New York, County of New York, made herein,

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dated the 28th day of February, 1928 and entered in the Office of the Clerk of the County of New York on the 14th day of March, 1928 and from each and every part of said final decree as well as from the whole thereof.

Dated, New York, April 14th, 1928.

Yours, etc., Hollander & Bernheimer, Attorneys for Objector, Seward W. Ehrich, Inc., Office & P. O. Address, No. 61 Broadway, Borough of Manhattan, City of New York.

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To: Clerk of the County of New York. Hon. George P. Nicholson, Corporation Counsel of the City of New York. Murray, Aldrich & Roberts, Esqs., Attorneys for Manhattan Railway Company, Owner and Lessor, No. 37 Wall Street, Borough of Manhattan, City of New York. James L. Quackenbush, Esq., Attorney for the Interborough Rapid Transit Company, Lessee of the Manhattan Railway Company, No. 165 Broadway, Borough of Manhattan, City of New York. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Company of New York, Holder of first mortgage on the Manhattan Railway Company, as Trustees, No. 34 Nassau Street, Borough of Manhattan, City of New York. George Welwood Murray, Esq., Attorney for the Equitable Trust Company of New York, Holder of second mortgage on the Manhattan Railway Company, as Trustee, No. 37 Wall Street, Borough of Manhattan, City of New York.

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64 **Final Decree of Supreme Court, Being Appealed From.**

At an extraordinary Special Term of the Supreme Court of the State of New York, First Judicial District, held in and for the County of New York, at the County Court House in the Borough of Manhattan, on the 28th day of February, 1928.

Present—Hon. James O'Malley, Justice.

In the Matter of the Application of The City of New York relative to acquiring title to the elevated railroad structure, tracks, stations, platforms,
65 stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned in East 42nd Street constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

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66 The City of New York having heretofore made application to this Court that the compensation which should be made to the Manhattan Railway Company or to whomsoever may be entitled thereto for acquiring title to the elevaed railroad structure, tracks, stations, platforms, stairways and appurtenances in East 42nd Street, constituting the exisitng 42nd Street Spur, in the Borough of Manhattan, City of New York, and also for acquiring the right to extinguish all rights, easements and franchises of every nature whatsoever, of said

Manhattan Railway Company, or by whomsoever owned, to construct, maintain or use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, be ascertained and determined by the Court, without a jury, and that the cost of such improvement be assessed by the Court in accordance with Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919 and as amended by Chapter 635 of the Laws of 1923 and the Greater New York Charter, as amended and the resolutions of the Board of Estimate and Apportionment, adopted on the 30th day of September, 1921, and the 29th day of June, 1923, and said application having been duly granted by an order of this Court, bearing date the 18th day of July, 1923, and entered in the office of the Clerk of the County of New York on the 18th day of July, 1923.

That an appeal was taken to the Appellate Division of the Supreme Court, First Judicial Department, State of New York from the aforesaid order by the Interborough Rapid Transit Company and by the Manhattan Railway Company and the said appeal having been argued, it was, by orders of the said Appellate Division of the Supreme Court, bearing date the 14th day of March, 1924, and entered in the office of the Clerk of the said Appellate Division of the Supreme Court on the 14th day of March, 1924, unanimously ordered that the order so appealed from be affirmed with $10 costs and disbursements to the respondent.

And it appearing that thereafter the Corporation Counsel of The City of New York filed in the office of the Clerk of the County of New York, a survey or map showing such real property subdivided into parcels corresponding with the sepa-

70 rate ownerships thereof as nearly as the same was ascertained, and the said Corporation Counsel having also caused to be published daily in the City Record, a public newspaper printed and published daily in the City of New York, in the manner required by law, the notice required by section 1000 of the Greater New York Charter to owners and persons interested in the said proceeding, to file with the Clerk of the County of New York their claims and demands, and to serve on the Corporation Counsel a copy of such claims and demands,

71 and the proceeding having been regularly brought on for trial and tried before me, one of the Justices of the Supreme Court, at an Extraordinary Special Term, held in and for the County of New York on September 27th, November 12th, 13th, 14th, 1923, and June 2nd, 3rd, 4th, 9th, 10th, 16th and 23rd, November 6, 1924, and September 22nd, 1925, and I, having viewed the real property acquired herein and the real property included within the area of assessment determined by the Board of Estimate and Apportionment by resolutions adopted on the 29th day of June, 1923, and after

72 considering the proofs and testimony heretofore offered by the claimant or claimants and The City of New York, made an estimate of the compensation which ought to be made to the owners and persons interested in said property, and an estimate of the assessment of the value of the benefit and advantage of the improvement to the respective owners of the real property within the area of assessment for benefit, and having made and signed the tabular abstract of estimated damage and the tabular abstract of estimated assessment for benefit, constituting the tentative decree of the Court as to awards for damage and as to assessments for benefit, on the 4th day of April 1927,

which tentative decree was filed in the office of the Clerk of the County of New York on the 11th day of April 1927, and the Corporation Counsel of The City of New York having caused to be published in fifteen consecutive issues of the City Record the notice required by section 1002 of the Greater New York Charter, and objections having been filed to the said tentative decree, and the Corporation Counsel having on the 25th day of May 1927 at 10 o'clock in the forenoon, the date fixed in said notice, applied to me to fix a time when I would hear the parties who had filed objections to the said tentative decree, and said hearing having duly come on to be heard on the 20th day of October 1927, and after hearing the objectors to the said tentative decree, and after considering and examining the objections to the said tentative decree, I, the Justice who made the said tentative decree, gave instructions to the Corporation Counsel as to the preparation of the final decree and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 29th day of July 1924 and entered in the office of the Clerk of the County of New York on the 29th day of July 1924, at the sum of Eleven Thousand Six Hundred and Twenty Five dollars ($11,625.00) and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 6th day of May 1925 and entered in the office of the Clerk of the County of New York on the 6th day of May 1925, at the sum of Nine Thousand Eight Hundred Dollars ($9800.00) and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 13th day of January 1926, and entered in the office of the Clerk of the County

76 of New York on the 14th day of January 1926, at the sum of Three Thousand and Twenty Five dollars ($3,025.00) and a bill of costs, charges and expenses of this proceeding taxed by order of this Court bearing date the 8th day of December 1927, and entered in the office of the Clerk of the County of New York on the 8th day of December 1927, at the sum of Thirty Five Thousand, Six Eighty Four Dollars and Two cents ($35,684.02).

The Board of Estimate and Apportionment on the 23d day of November 1923, adopted the following resolution:

77 "Resolved, That the Board of Estimate and Apportionment, in pursuance of the provisions of said Special Act as so amended and supplemented, and the provisions of the Greater New York Charter, as amended, including section 976 thereof, hereby directs, as authorized by said acts, that title in fee to and the right to remove

" 'The elevated railroad structure, tracks, stations, platforms, stairways and appurtenances now existing within and obstructing said part of said street constituting the existing 42d Street Spur, de-

78 scribed as follows, to wit:

" 'Beginning at the corner formed by the intersection of the southerly line of East 42nd Street with the easterly line of Park Avenue, thence westerly along the westerly prolongation of the southerly line of East Forty second street, distance 50 feet; thence northerly at right angles to the line of East 42nd Street, distance One Hundred feet, to a point in the northerly line of East 42nd Street; thence easterly along the northerly line of East 42nd street, distance nine hundred and twenty seven feet; thence southerly at right angles to the

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line of East 42nd Street, distance Twenty-one feet; thence easterly and parallel with the line of East 42nd Street, distance twenty-four feet; thence southerly at right angles to the line of East 42nd Street, distance thirty six feet; thence southerly and deflecting to the left thirty seven degrees, thirty minutes, fifteen seconds, distance fifty four and two tenths feet, to a point in the southerly line of East 42nd Street, as it is prolonged across 3d Avenue, thence westerly along the said prolongation of the southerly line of East 42nd Street, distance thirty four feet to the corner formed by the intersection of the southerly line of East 42nd Street with the westerly line of 3d Avenue; thence westerly along the southerly line of East 42nd Street, distance nine hundred feet to the point or place of beginning.'

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—and all rights, easements and franchises of every nature whatsoever, except as hereinafter provided, whether owned by the Manhattan Railway Company or by whomsover owned or controlled under which said elevated structure, tracks, stations, platforms, stairways and appurtenances were constructed and are maintained; also to all rights, easements and franchises, by whomsoever owned or controlled, to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in said part of said street and to operate cars or trains of any kind whatsoever thereon or thereover except any existing franchise rights of the Manhattan Railway Company or construct and maintain a circuit breaker and such facilities, including stairways in connection with and immediately adjacent to its 3rd Avenue Station at 42nd Street as the Transit Commission may determine to be necessary for the

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82 public convenience and necessity, in the Borough of Manhattan, The City of New York, shall vest in The City of New York on the 7th day of December 1923."

That the sums of money awarded for the damages sustained by reason of this proceeding, together with interest on the awards for the property acquired by The City of New York herein pursuant to the provisions of Chapter 635 of the Laws of 1923 from the date of vesting of title in this proceeding, as aforesaid, to the date of this
83 the final decree, amount to the sum of one million two hundred twenty two thousand seven hundred and Eleven Dollars and Fifty-three cents ($1,222,-711.53).

Interest is included on the awards for the property acquired by The City of New York herein pursuant to the provisions of Chapter 635 of the Laws of 1923, as part of the compensation where title has vested in The City of New York, as aforesaid, to the date of this the final decree, and this amount of interest is included in the assessments for benefit; and it is

84 Adjudged and decreed, That the sums of money assessed for benefit by reason of this improvement amount to the sum of one million two hundred and eighty two thousand, eight hundred and forty five dollars and fifty five cents ($1,282,845.55), which is imposed upon the real property within the area of assessment fixed and determined by the Board of Estimate and Apportionment by resolution adopted on the 29th day of June, 1923, and in accordance with the provisions of said resolution of the Board of Estimate and Apportionment.

Adjudged and decreed, That the amounts set

opposite the respective damage parcels numbers in the column headed "Final Awards" in the tabular abstracts of awards for damage which is made part of this, the final decree, constitute and are the just compensation which the respective owners are entitled to receive from The City of New York; and it is further 85

Adjudged and decreed, That the amounts set opposite the respective benefit parcels numbers in the column headed "Benefit Final Assessments" in the tabular abstract of assessments for benefit, which is made part of this, the final decree, constitute the sums of money to be paid to The City of New York for the benefit and advantage derived by reason of the said improvement by the respective owners of each parcel so assessed; and it is further 86

Adjudged And Decreed, That the sums of money imposed upon the real property within the area of assessment fixed and determined by the Board of Estimate and Apportionment has been distributed in proportion to the benefit which such real property received, but not in excess of such benefit; and it is further 87

Adjudged And Decreed, That each parcel of real property assessed has been valued by the Court as of the date of this, the final decree, as enhanced by reason of this improvement, and that in no case does the assessment for benefit exceed one half the value of the property so assessed and it is further

Ordered And Adjudged, That every parcel of real property within the amended area of assessment for benefit has been assessed its share of the

88 cost and expense of the proceeding in proportion to the amount of actual benefit which each parcel of real property received from the improvement, but not in excess of such benefit.

Enter James O'Malley, J. S. C.

Final Decree (Abstract of Estimate) of Supreme Court, Being Appealed From.

New York Supreme Court, First Department.

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89 In the Matter of the application of the City of New York, relative to acquiring title to the tracks, structures, station and appurtenances of the Manhattan Railway Company in East 42nd Street, Borough of Manhattan, City of New York and also to the rights, easements, and franchises of said Manhattan Railway Company to construct, maintain and use said tracks, structure, station and appurtenances.

Abstract Of Estimate Of The Supreme Court in the above entitled matter made and deposited according to law.

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Awards For Damage.

Map Numbers	Owners	Damage Estimated	Final
1	Manhattan Railway Company	$975,438.00	$975,438.00
	Interest		247,273.53
	Subject to First Mortgage held by Central Union Trust Company of New York as Trustees to secure the payment of bonds outstanding aggregating $40,670,000.00		

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Subject to Second Mortgage held by the Equitable Trust Company of New York as Trustees to secure payment of bonds outstanding aggregating $4,523,000.00

Subject to Indenture of Lease dated January 1st 1903, for a period of 999 years from November 1st 1875 to the Interborough Rapid Transit Company.

This award is made for the property acquired by The City of New York herein pursuant to the provisions of Chap. 635 of the Laws of 1923.

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Total $1,222,711.53

Dated, New York, April 4, 1927.

James O'Malley, Justice of the Supreme Court of the State of New York.

Dated, New York, February 28, 1928

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James O'Malley, Justice of the Supreme Court of the State of New York.

Damage Maps Attached to Final Decree of Supreme Court.

(These maps are printed at page 1888 of the record)

94 **Final Decree (Abstract of Benefit) of Supreme Court, Being Appealed From.**

New York Supreme Court, First Department.

In the Matter of the Application of The City of New York relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned in East 42nd Street constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

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Abstract of Benefit of the Supreme Court in the above-entitled matter made and deposited according to law.

ASSESSMENT FOR BENEFIT.

Ward Nos. Block	Lot	Map Nos.	Owners or Occupants	Benefit Estimated	Benefit Final Assessment
1277	4	1	J. R. Ford	$1,017.24	$966.00
	2	2	S. S. Parsons	1,861.15	1,767.40
	1	3	S. P. Morton, Est.	9,270.48	8,803.53
	6	4	Oceanic Inv. Co.	2,268.32	2,154.06
	7	5	" " "	1,886.92	1,791.88
	8	6	J. Milbank, et al.	6,510.54	6,182.60
	10	7	G. E. Watson	2,464.59	2,340.45
	11	8	F. G. Schmidt	2,506.97	2,380.69
	12	9	A. Lewishon & Sons	2,898.55	2,752.24
	14	10	Anahana Realty Co.	15,837.15	15,038.50
	20	11	D. Milbank	22,334.68	21,209.14
	27	12	N. Y. C. & H. R. R. Co.	9,707.00	9,217.71
1280	1	13	N. Y. C. & H. R. R. Co.	79,453.76	75,574.74
	30	14	N. Y. State Rlty. & Term. Co.	156,339.84	148,817.09

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Final Decree (Abstract of Benefit).

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1297	23	15	Cooper Union Institute	98,574.45	93,830.78	
	45½	16	Robert Goelet Est.	470.79	447.70	
	27	17	" " "	13,055.07	12,427.51	
	28	18	" " "	12,340.70	11,747.48	
	29	19	Thomas F. Fox	13,400.31	12,756.16	
	30	20	B. D. Fitzpatrick Est.	13,587.34	12,934.20	
	31	21	R. F. Westcott Est.	28,414.59	27,048.70	
	36	22	Central Manhattan Properties	1,302.02	1,239.43	
	32½	23	" " "	14,667.08	13,962.03	
	35	24	" " "	1,392.45	1,325.51	
	34½	25	" " "	1,844.06	1,755.42	
	33	26	" " "	22,737.75	21,644.75	
1316	4	27	C. H. Randall	294.61	278.79	
	3	28	J. Kelley Est.	1,139.36	1,078.18	
	1	29	" "	4,578.50	4,332.63	198
	5	30	St. Bartholmew's Church	8,455.05	8,001.01	
	10	31	" " "	3,053.21	2,889.25	
	12	32	American Railway Exp. Co.	8,128.74	7,694.82	
	17	33	A. Gerstendorfer	977.03	924.56	
	18	34	" "	3,382.02	3,200.41	
	21	35	N. Marraffino	1,033.40	977.91	
	22	36	Geo. Ehret	986.42	933.45	
	26	37	P. M. Schell Est.	150.31	142.24	
	25	38	" " "	300.62	284.48	
	24	39	" " "	450.94	426.72	
	23	40	W. Marshall	2,107.37	1,994.20	
1276	69	41	Oceanic Inv. Co.	8,413.07	7,989.30	
	68	42	A. Pottier Est.	2,202.57	2,091.63	
	1	43	Oceanic Inv. Co.	5,599.73	5,316.70	
	66	44	I. S. Korn	2,328.27	2,211.00	
	65	45	C. Cachard Est.	2,371.67	2,252.21	199
	64	46	D. W. Bishop	2,413.92	2,292.33	
	63	47	A. D. Parsons, Est.	2,456.20	2,332.48	
	62	48	S. H. Weinberg	2,498.47	2,372.62	
	58	49	42nd St. & Madison Ave. Co.	17,751.01	16,856.61	
	4	50	A. Pottier Est.	787.53	747.61	
	51	51	Anahana Rlty. Corp.	15,883.48	15,083.43	
	48	52	Athens Hotel Co.	5,009.26	4,756.74	
	42	53	Lincoln Safe Deposit Co.	25,183.39	23,913.93	
	33	54	Subway Realty Co.	19,621.70	18,632.51	
1296	1	55	Bowery Savings Bank Pershing Sq. Bldg. Corp.	71,247.85	67,819.53	
	63	56	" " "	59,177.88	56,330.81	
	61	57	42nd St. R. R. Co.	27,959.29	26,615.29	
	14	58	Manhattan Stor. & Wrhouse Co.	71,320.20	67,887.27	
	46	59	R. Goelet Est.	104,146.20	99,139.89	

100 *Final Decree (Abstract of Benefit).*

	20	60	" " "	5,448.85	5,185.15
	44	61	Wm. Volk	23,299.39	22,179.39
	43	62	Geo. Ehret	23,299.39	22,179.39
	41	63	Bernheim Rlty. Co.	23,299.39	22,179.39
	40	64	William Volk	37,801.73	35,984.60
	37	65	" "	4,112.19	3,914.52
1315	49	66	J. Curry Est.	5,124.14	4,848.97
	48	66A	202-204 E. 42nd St. Corp.	1,658.58	1,569.51
	51	67	M. S. Buck	592.92	561.08
	52	68	" " "	388.18	367.33
	44	69	City of New York	10,712.17	10,139.37
	41	70	Hub Realty Co.	1,466.11	1,387.42
	40	71	" " "	1,356.39	1,283.55
	39	72	" " "	1,323.59	1,252.51
101	38	73	" " "	1,306.68	1,236.51
	37	74	" " "	1,287.58	1,218.50
	36	77	" " "	1,822.24	1,725.66
	35	78	M. Blum Est.	1,171.37	1,108.47
	34	79	J. E. Gordon	1,124.52	1,064.13
	33	80	Hof. Realty Co.	1,077.66	1,019.79
	32	81	W. Longman	1,030.81	975.46
	31½	82	E. S. Stanley	983.95	931.11
	31	83	C. F. Bound	2,079.12	1,967.47
	30	84	" " "	445.52	421.60
	29	85	H. Kempner Est.	297.02	281.07
	28	86	L. A. Loew	148.51	140.54
	27	87	Wm. Schienemann Est.	106.70	101.23
	26	88	L. Schmitt	106.70	101.23
	25	89	Lillian Hof	106.70	101.23
	24	90	Hup Realty Co.	106.70	101.23
102	19	91	J. E. Gordon	577.68	548.06
	14	92	Hup Realty Co.	151.08	143.33
	13	93	" " "	134.56	127.66
	6	94	Geo. H. Earle, Jr.	149.31	141.65
	5	95	M. Kidwell	149.31	141.65
	4	96	" "	117.00	111.00
	3	97	F. Mulvey	117.00	111.00
	2½	98	" "	114.66	108.78
	2	99	H. Parkhill	114.66	108.78
	1	100	B. A. Reinold	114.66	108.78
1314	1	101	C. E. Tyte	113.81	107.97
	2	102	" " "	119.15	113.04
	3	103	Q. Brockner Est.	124.49	118.11
	4	104	" " "	129.82	123.16
	48	105	M. D. Wise	177.39	168.29
	47	106	C. B. Stanbsandt	115.60	109.67

46	107	A. A. Johnston	147.42	139.86
45	108	" " "	99.35	94.26
44½	109	" " "	117.22	111.21
44¼	110	Heyer Realty Co.	117.22	111.21
44	111	P. Albert	177.75	168.63
43	112	" "	177.75	168.63
42	113	C. Pabst	168.86	160.20
41	114	R. E. Kelley	151.96	144.17
40	115	" " "	143.97	136.59
39	116	" " "	143.97	136.59
38	117	Louise L. Kelley	135.97	129.00
37½	118	R. E. Kelley	135.97	129.00
37	119	S. Vogel	127.98	121.42
36	120	A. Levien	127.98	121.42
35	121	" "	119.97	113.82
34	122	M. G. Byrne	119.97	113.82
33	123	" " "	111.98	106.24
32	124	E. Sachse	129.40	122.76
31	125	C. W. Paul	120.16	114.00
30	126	N. I. Hernich	120.16	114.00
29	127	S. E. F. d'Aguiar	106.64	101.17
28½	128	A. Carman	83.13	78.87
28	129	C. W. Lane	64.80	61.48
27½	130	S. Beuttemueller	57.11	54.18
27	131	F. L. Roome	55.89	53.02
26	132	" " "	54.68	51.88
25	133	J. H. Glander	102.70	97.43
23	134	Rosehill Realty Corp.	152.32	144.51
21	135	" " "	142.88	135.55
4½	136	I. B. Tyte	124.43	118.05
5	137	T. A. Coltan	124.43	118.05
6	138	S. Karageorges	94.20	89.37
7	139	" "	141.30	134.05
8	140	E. Blinks	111.09	105.39
9	141	A. H. Bade	111.09	105.39
10	142	C. Schlosser	104.43	99.07
11	143	C. F. Pietzsch	104.43	99.07
12	144	Prospect Hill Realty Co.	146.64	139.12
14	145	" " " "	136.64	129.63
16	146	H. Hoffmann	126.64	120.15
17	147	R. Johanson	116.64	110.66
18	148	E. J. Pitshhe	77.76	73.77
19	149	Rosehill Realty Corp.	105.23	99.83
20	150	" " "	105.23	99.83
920 1	151	A. M. Brennan	50.68	48.08
2	152	" " "	56.02	53.15

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Final Decree (Abstract of Benefit).

	3	153	T. S. Bonfiglio	66.13	62.74
	4	154	M. Wagner	132.30	125.52
	68	154A	O. Wagner	29.25	27.75
	67	155	M. E. Maguire Est.	92.48	87.74
	66	156	E. S. Brill	67.93	64.45
	64	157	A. M. Harrison	143.29	135.94
	63	158	D. Werfelman	76.95	73.01
	62	159	A. M. Harrison	56.14	53.26
	61	160	" " "	56.14	53.26
	60	161	J. F. Gerdes	192.72	182.84
	58	162	S. V. Cahill	80.07	75.96
	57	163	" " "	80.07	75.96
	56	164	K. K. Kenney	76.65	72.72
	55	165	City of New York	85.54	81.15
107	53	166	Salvation Army	172.41	163.57
	52	167	H. Kempner Est.	104.41	99.06
	50	168	" " "	97.76	92.75
	49	169	J. Herrman	94.43	89.59
	48	170	S. Ballin	91.10	86.43
	42	172	Kantach Heath & Warman	103.68	98.36
	41	173	O. Pfleger	55.99	53.12
	40	174	M. M. Vanghan	39.82	37.78
	39	175	J. E. Jahrauss	39.82	37.78
	38	176	" " "	39.82	37.78
	28	177	C. Looram Est.	41.83	39.68
	29	178	" " "	42.58	40.40
	30	179	W. Baumgarten	43.33	41.11
	31	180	Wm. J. Borgelt	44.07	41.81
	32	181	A. Wexler	44.82	42.52
	33	182	P. F. Kane	70.76	67.13
108	34	183	L. S. Wilson	74.70	70.87
	35	184	Jas. Hume Est.	68.02	64.53
	36	185	P. Purcell	98.42	93.37
	5	186	T. M. Brennan	31.97	30.33
	6	187	D. H. Schult Est.	40.24	38.18
	7	188	N. Grubstein	67.07	63.63
	8	188A	C. M. M. Kelley	45.78	43.43
	9	189	B. O'Brien	46.21	43.84
	10	190	F. N. Glover	46.21	43.84
	11	191	H. K. Brennan	46.21	43.84
	12	192	J. Garry Est.	46.21	43.84
	13	193	P. A. Juley	55.46	52.62
	14	194	F. F. Quinlan	54.25	51.47
	15	195	H. Riefel	107.78	102.25
	17	196	B. M. McCauley	50.65	48.05
	18	197	" " "	51.19	48.56
	19	198	R. H. Toner	50.65	48.05

20	199	Rees & Rees	348.66	330.78	
23	200	" "	44.08	41.82	
24	201	" "	44.60	42.31	
25	202	Hup Realty Co.	65.63	62.26	
26	203	" " "	60.57	57.46	
27	204	" " "	60.57	57.46	
919 1	205	A. McCooey	25.11	23.82	
2	206	H. Rothschild Est.	27.62	26.20	
3	207	Fredk. Hof.	30.13	28.58	
4	208	Lillian Hof.	29.30	27.80	
5	209	A. Anerbach	46.80	44.40	
63	210	K. Moeschen	50.40	47.82	
62	211	" "	54.00	51.23	
61	212	C. A. Mount Est.	43.20	40.98	
60	213	" " " "	45.90	43.55	110
59	214	J. Lynch Est.	60.75	57.63	
58	215	" " "	46.80	44.40	
57	216	J. C. Heaton Est.	36.40	34.53	
56	217	A. Egan	34.70	32.92	
55	218	J. J. Egan	36.40	34.53	
54	219	" " "	34.70	32.92	
53	220	D. Phyfe Est.	47.40	44.97	
52	221	J. H. Fitzpatrick	47.40	44.97	
51	222	J. H. Cudmore	47.40	44.97	
50	223	T. F. Quinlan	47.40	44.97	
49	224	T. M. Brennan	47.40	44.97	
48	225	" " "	47.40	44.97	
47	226	J. C. G. Hupfel Berg. Co.	51.89	49.23	
46	227	" " " " " "	84.65	80.31	
44	228	" " " " " "	53.33	50.60	
43	229	" " " " " "	53.33	50.60	111
42	230	" " " " " "	62.21	59.02	
16	231	" " " " " "	497.70	472.18	
37	232	D. Taylor	38.59	36.61	
36	233	" "	38.39	36.42	
35	234	M. C. Finley	53.32	50.59	
34	235	G. Gibien	48.08	45.61	
33	236	" "	47.91	45.45	
32	237	H. Riffel	52.16	49.49	
31	238	" "	58.14	55.16	
29	239	" "	56.48	53.58	
28	240	" "	52.88	50.17	
27	241	" "	58.21	55.22	
6	242	A. B. Pfeming	88.17	83.65	
9	243	E. Neumann	33.33	31.62	
10	244	E. Quinn	44.43	42.15	

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		11	245	Hup Realty Co.	44.43	42.15
		12	246	" " "	40.08	38.02
		13	247	J. Armstrong	40.08	38.02
		14	248	J. C. G. Hupfel Berg. Co.	40.08	38.02
		15	249	" " " " " "	40.08	38.02
		23	251	Henry Riffel	44.43	42.15
		24	252	" "	44.43	42.15
		25	253	" "	45.71	43.37
	1296	22	255	R. Goelet Est.	531.74	504.47
		25	256	J. Weeks Est.	863.86	819.56
		30	257	K. W. Winthrop	177.75	168.63
		31	258	" " "	177.75	168.63
		32	259	" " "	177.75	168.63
		36	260	M. Wachter	222.03	210.64
		35	261	Wm. J. Tierney Est.	222.03	210.64
113		32½	262	C. H. Doscher	117.36	111.34
		34	263	" " "	148.75	141.12
		33	264	" " "	149.24	141.59
	1295	23	265	M. S. Toretti	199.43	189.20
		21	266	Cosmochob Realty Corp.	211.52	200.67
		20	267	S. M. Faust	108.77	103.19
		53	268	J. A. Faust	106.65	101.18
		52	269	J. G. Rogers	109.31	103.70
		51	270	K. E. Henesy	111.98	106.24
		50½	271	G. G. Kip	114.64	108.76
		50	272	Eliz. Kip Est.	117.32	111.30
		50¼	273	G. G. Kip	96.01	91.09
		48	274	M. C. Heine	556.42	527.89
		46	275	Phillips Wicks Est. Corp.	195.48	185.46
		45	276	Tiffany & Co.	178.31	169.17
114		44	277	Edw. S. Boylston	176.04	167.01
		41	278	Thos. J. McCahill	533.25	505.90
		40½	279	S. Smyth, Jr.	77.85	73.86
		33	280	M. S. Seifert	142.27	134.97
		34	281	R. T. Reiley	148.94	141.30
		35	282	S. E. Connell	155.61	147.63
		36	283	U. S. Trust Co.	162.28	153.96
		37	284	J. P. Pils	126.54	120.05
		37½	285	Rachel Berg	131.54	124.79
		38	286	Emma Herbst	136.53	129.53
		39	287	Jas. Rozell Est. Inc.	104.90	99.52
		40	288	P. J. Cushley	147.01	139.47
		24	289	M. S. Tonetti	199.08	188.87
		25	290	H. A. Pomroy	84.10	79.79
		26	291	J. P. Hendricks	87.89	83.38
		27	292	N. S. Miller	162.03	153.72

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28	293	A. A. DeLaMar	147.42	139.86	
29	294	D. Phyfe Est.	125.54	119.10	
30	295	" " "	124.43	118.05	
31	296	149 E. 40th St. Co.	248.85	236.09	
895 69	297	Gould Coupler Co.	86.91	82.45	
70	298	" " "	84.02	79.71	
71	299	" " "	81.12	76.96	
72	300	A. Bloomenfeld	78.22	74.21	
73	301	Cosul Realty Corp.	95.94	91.02	
24	302	Mary Schwab	74.70	70.87	
25	303	E. F. Stolte	54.99	52.17	
26	304	Wm. P. Bannister	51.48	48.84	
27	305	M. D. Tappan	47.97	45.51	
28	306	Wm. M. Laffan, Est.	51.12	48.50	
68	307	M. S. Tonetti	68.99	65.45	116
67	308	Jas. W. McKee	68.99	65.45	
66	309	A. C. B. Foster	358.34	339.96	
63	310	J. F. A. Clark	238.90	226.65	
60	311	J. D. Dickson	86.18	81.76	
61	311A	F. Bossong	20.25	19.21	
59	312	I. Bossong	88.63	84.09	
58	313	Geo. Ehret	183.71	174.29	
56	314	C. C. Tegethoff	127.66	121.11	
55	315	J. Devine Est.	24.19	22.95	
54	316	P. F. Devine	77.76	73.78	
53	317	J. Devine Est.	100.22	95.08	
52	318	J. G. Kirkman	95.04	90.17	
51	319	H. Greenebaum	89.86	85.25	
50	320	Max Meyer	61.20	58.06	
49	321	J. Newman	66.10	62.71	
48	322	S. Kavalier	54.35	51.56	117
47	323	Joseph Goldstein	51.99	49.32	
46	324	E. G. Schwarz	28.08	26.64	
45	325	M. S. Alarich	69.98	66.39	
44	326	" " "	19.44	18.44	
43	327	" " "	20.52	19.47	
42	328	P. Coughlein	53.77	51.01	
41	329	" "	75.53	71.66	
39	330	N. Y. Edison Co.	102.12	96.88	
38	331	L. D. Tillson	50.47	47.88	
34	332	143 E. 39th St. Co.	201.35	191.02	
33	333	F. M. Bacon, Jr.	50.33	47.75	
32	334	P. D. Bacon	49.76	47.21	
31	335	" " "	85.36	80.98	
30	336	E. V. N. Martin	50.43	47.84	
29	337	E. F. H. Wychoff	43.02	40.81	

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	894	63	338	French Chu du St. Espirels	62.21	59.02
		64	339	" " " " "	57.53	54.58
		65	340	Robt. U. Johnson	54.14	51.36
		66	341	J. McMahon	51.41	48.77
		22	342	Thomas Swell	40.32	38.25
		23	343	I. L. Boesah	37.44	35.52
		24	344	F. R. Woolton	34.56	32.79
		25	345	W. F. Martin	24.96	23.68
		26	346	J. Kelley Est.	24.16	22.92
		27	347	A. A. Clarkson Est.	14.59	13.84
		61	348	H. Schmidt	123.23	116.91
		60	349	F. M. Dowling	56.01	53.14
		59	350	140 E. 39th St. Corp.	71.10	67.45
		57	351	Mary C. Thompson	71.10	67.45
119		56	352	Sarah S. Hewilt	71.10	67.45
		55	353	Gothland Realty Corp.	59.76	56.70
		54	354	Fannie J. Maxwell	71.54	67.87
		53	355	S. S. Warrin	71.10	67.45
		52	356	M. S. Warrin	71.10	67.45
		49	357	Jas. Rozell Est. Inc.	77.34	73.37
		48	358	M. G. C. Goodman	44.77	42.47
		47	359	M. S. Warrin	72.72	68.99
		46	360	Mary Sipaght Est.	67.50	64.04
		45	361	E. A. Cruikshank Est.	71.57	67.90
		44	362	Jas. S. Breese	64.47	61.16
		43	363	E. S. B. Norris Est.	41.40	39.28
		42	364	P. D. Koopmann	32.45	30.79
		28	365	K. E. Wilson	33.77	32.04
		29	366	Wm. V. Rowe	33.77	32.04
		30	367	J. D. F. Delafield	33.77	32.04
120		31	368	C. Gallagher	33.77	32.04
		32	369	" "	33.77	32.04
		33	370	" "	51.41	48.77
		34	371	S. S. Huntington	27.07	25.68
		35	372	H. M. McLaughlin	27.07	25.68
		36	373	Courtney Hyde	27.07	25.68
		37	374	E. G. Bowdoin	44.43	42.15
		38	375	E. P. Robinson	44.43	42.15
		39	376	Jas. Loeb	35.54	33.72
		40	377	C. Martin	28.48	27.02
	1295	69	381	41st St. & Park Ave. Corp.	783.87	743.67
		67	382	" " " " " "	177.75	168.63
		65	383	Charles & Co.	355.50	337.27
		64	384	R. Croker, Jr.	177.75	168.63
		63	385	" " "	177.75	168.63
		62	386	" " "	177.75	168.63

	61	387	Steuben Co.	177.75	168.63
	60	388	" "	135.09	128.16
	59½	389	R. Croker, Jr.	135.09	128.16
	59	390	Janet S. McKay	108.07	102.53
	58	391	Jno. W. Smyth	106.35	100.90
	57½	392	" " "	103.94	98.61
	57	393	C. Stowell	101.53	96.32
	56½	394	" "	99.11	94.03
	56	395	J. S. McKay	123.71	117.37
	1	396	Architecto Offices Inc.	858.17	814.16
	8	397	E. Flagg	237.64	225.45
	10	398	R. Croker, Jr.	93.31	88.53
	10½	399	A. D. McCullough	93.31	88.53
	11	400	R. Croker, Jr.	93.31	88.53
	12	401	C. C. Foote	124.43	118.05
	13	402	R. J. McClearahan	99.54	94.44
	14	403	F. R. McCreery	99.54	94.44
	14½	404	Newbold La Roy Edgar	103.10	97.81
	15	405	L. G. Glorrey	106.65	101.18
	16	406	Wm. M. Cruikshank	110.21	104.56
	17⅛	407	E. C. Brown	32.40	30.74
	17¼	408	Park E. Bell	30.71	29.14
	17⅓	409	C. D. Wetmore	29.53	28.02
	17¼	410	W. R. Seigle	28.66	27.19
	17	411	W. G. Langdon Co.	28.80	27.32
895	1	412	G. C. Boldt	54.04	51.27
	2	413	M. M. Govin	58.30	55.31
	3	414	Agnes Roche	62.57	59.36
	3	415	A. M. Fraser Est.	66.83	63.40
	5	416	" " " "	71.10	67.45
	94	417	Schwarzler Realty Co.	121.37	115.15
	93	418	M. S. P. Hogan	69.98	66.39
	92	419	J. F. Valentine	72.58	68.86
	90	420	Henry St. Settlement	164.16	155.74
	89	421	Robt. Graves	93.24	88.46
	85	422	Park Ave. Operating Co.	472.81	448.56
	84	423	M. S. Webster	99.54	94.44
	83	424	W. E. Maynard	99.54	94.44
	82	425	" " "	99.54	94.44
	81	426	Wm. Rand	99.54	94.44
	80	427	M. A. Jagendorf	99.54	94.44
	79	428	Gothland Realty Corp.	99.54	94.44
	78	429	Hoggson Bros. Corp.	181.31	172.01
	76	430	A. C. Faber	84.60	80.26
	75	431	J. T. Ashley	81.59	77.41
	74	432	F. B. Henry	77.66	73.68
	23	433	A. G. Daysters	63.18	59.94

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124	22	434	F. N. Dowling	65.99	62.61
	21	435	L. F. Wickham	61.78	58.61
	20	436	I. W. Richardson	57.56	54.61
	19	437	H. B. Green	55.35	52.51
	6	438	E. Van Volhenburgh	47.40	44.97
	7	439	C. E. Bedford	47.40	44.97
	8	440	E. S. Smyth	47.40	44.97
	9	441	Fitz-Henry F. Tucker	71.10	67.45
	10	442	Princess Eliz. Siroff	71.10	67.45
	11	443	F. A. Otis	47.40	44.97
	12	444	F. N. Dowling	47.40	44.97
	13	445	E. J. Evans	47.40	44.97
	14	446	M. Friedel	48.34	45.86
	15	447	B. Silvera	56.88	53.96
	16	448	M. A. Page	56.88	53.96
125	17	449	E. J. Curran	56.88	53.96
	18	449A	A. W. Dennett	56.88	53.96
894	1	450	67 Park Ave. Corp.	119.54	113.41
	4	451	J. E. Stevens	59.62	56.56
	5	452	" " "	42.23	40.06
	89	453	W. P. Bliss	60.72	57.61
	88	454	A. T. Wheelock Est.	39.97	37.92
	87	455	" " " "	36.79	34.90
	86	456	Wm. R. Brown	66.14	62.75
	84	457	A. T. Wheelock Est.	55.32	52.48
	83	458	G. S. Whitman	60.00	56.92
	82	459	B. F. Thurber	48.34	45.86
	81	460	E. H. Olin	56.88	53.96
	80	461	A. M. Bogert	56.88	53.96
	79	462	M. D. O'Mara	56.88	53.96
	78	463	E. V. B. McCullough	56.88	53.96
126	77	464	K. de V. Schwab	56.88	53.96
	76	465	D. Mahony Est.	56.88	53.96
	75	466	E. A. Hurry	56.88	53.96
	74	467	E. Patterson Est.	56.59	53.69
	73	468	N. B. Paronnagian	56.59	53.69
	72	469	I. T. Mackie	57.58	54.63
	71	470	Thos. Snell	48.60	46.11
	70	471	" "	44.98	42.67
	69	472	" "	42.34	40.17
	68	473	" "	39.69	37.65
	67	474	" "	37.80	35.86
	21	475	Simon Baldwin Est.	35.00	33.21
	20	476	C. M. Sewell	30.78	29.20
	19	477	L. C. Ketcham	28.22	26.77
	18	478	H. E. Macher	25.65	24.33

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	17	479	C. S. Butler	29.70	28.18
	6	480	P. C. Baker	35.55	33.73
	7	481	S. Sidney Smith	35.55	33.73
	8	482	Yale Kneeland	44.43	42.15
	9	483	Casimer de R. Moore	44.43	42.15
	10	484	Beverly R. Robinson	35.55	33.73
	11	485	Tompkins McIllvaine	35.55	33.73
	12	486	Charles Ewing	30.21	28.66
	13	487	Estelle Sheffield	30.21	28.66
	14	488	Eliz. D. Gallatin	30.21	28.66
	15	489	A. Putnam	30.21	28.66
	16	490	Bella Da Costa Greene	30.21	28.66
1276	20	491	Athens Hotel Co.	213.75	202.79
	21	492	J. C. Riker	251.10	238.22
	22	493	301 Mad. Ave. Corp.	216.00	204.92
	23	494	F. D. Helmuth Est.	225.00	213.46
	24	495	H. A. Sherman Est.	75.82	71.93
1275	50	498	M. C. Thompson	157.53	149.45
	51	499	40 E. 41st St. Co.	157.53	149.45
	52	500	Mary C. Thompson	143.21	135.87
	20	501	" " "	318.89	302.54
	21	502	" " "	246.64	233.99
	23	503	" " "	209.48	198.74
	48	504	40 E. 41st St. Co.	427.01	405.11
	46	505	Chemist Club	284.40	269.82
	44	506	Chemist Bldg. Co.	402.41	381.77
	43½	507	Jas. Welton	118.01	111.96
	43	508	Benj. M. L. Bates	118.01	111.96
	27	509	" " " "	2,211.21	2,097.82
	24	510	M. C. Thompson	124.43	118.05
	25	511	" " "	124.43	118.05
	26	512	" " "	124.43	118.05
869	54	513	Horace Porter Est.	133.65	126.80
	55	514	309-11—5th Ave. Co.	133.22	126.39
	56	515	P. H. Rosenbach	124.34	117.96
	20	516	Ret. Realty Corp.	182.52	173.16
	21	517	" " "	122.69	116.40
	22	518	C. B. Sorchan	83.16	78.90
	24	519	M. T. Pyne Est.	126.00	119.54
	53	520	M. Blosveren	124.43	118.05
	52	521	Geo. M. Perkins	124.43	118.05
	51	522	Jos. Milbank	124.43	118.05
	50	523	M. T. Pyne	124.43	118.05
	49	524	Hoggson Bros.	124.43	118.05
	48	525	J. F. Alvord	124.43	118.05
	47	526	" " "	124.43	118.05

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	46	527	Investment Securities Corp.	124.43	118.05
	45	528	E. L. Ferris	124.43	118.05
	25	529	M. C. Nicoll	71.10	67.45
	26	530	M. E. Seeley	71.10	67.45
	27	531	E. D. Milbank	71.10	67.45
	28	532	J. Milbank	71.10	67.45
	[illegible]	533	H. S. Davenport	71.10	67.45
	30	534	C. L. Riker	71.10	67.45
	31	535	J. F. Stillman	71.10	67.45
	32	536	A. G. Fox	71.10	67.45
	33	537	Princeton Club of N. Y.	71.10	67.45
	44	538	Alex Wilson Rlty. Co.	71.28	67.62
	43	539	E. L. Ferris	71.28	67.62
	42	540	M. J. Rougeson	71.28	67.62
131	40	541	Cleveland E. Dodge	125.29	118.87
	38	542	Grace H. Dodge	134.78	127.87
	36	543	Princeton Club of N. Y.	140.90	133.67
	34	544	" " " " "	110.75	105.07
868	54	545	Jas. Spayer	98.68	93.62
	55	546	" "	93.15	88.37
	56	547	" "	83.84	79.54
	20	548	L. H. Tiffany	77.06	73.11
	22	549	Savage Rlty. Co.	86.40	81.97
	23	550	M. C. Wallace Est.	28.80	27.32
	24	551	" " " "	28.80	27.32
	25	552	F. B. Wallace Est.	36.00	34.15
	52	553	F. A. Haven Est.	82.47	78.24
	51	554	" " " "	56.88	53.96
	50	555	M. E. Nevins	71.10	67.45
	49	556	S. Wodell	56.88	53.96
132	48	557	E. S. Proctor	59.19	56.15
	47	558	G. Davis	59.19	56.15
	46	559	Wm. Skinner	79.61	75.53
	45	560	M. Y. Dickson	76.78	72.84
	42	561	A. C. James	174.15	165.22
	[illegible]	562	E. O. Butler	54.00	51.23
	40	563	J. E. Berwind	67.50	64.04
	39	564	F. Q. Jones	42.62	40.43
	38	565	72 Park Ave. Corp.	42.62	40.43
	37	566	Wm. F. Morgan	35.28	33.47
	36	567	Clara Sielcken	35.86	34.02
	26	568	St. Bartholomew's Church	39.11	37.10
	27	569	Chas. Duggin Est.	37.32	35.41
	28	570	Amos R. E. Pinchot	28.44	26.98
	29	571	C. M. De Costa	28.44	26.98
	30	572	J. E. Cameron	49.77	47.22

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	31	573	Geo. S. Franklin	39.11	37.10
	32	574	C. A. Beekman Est.	44.43	42.15
	33	575	Jas. Loeb, Kuhn Loeb & Co.	44.43	42.15
	34	576	Ferd. T. Hopkins	44.43	42.15
	35	577	S. E. Cook	44.43	42.15
1276	8	579	9 E. 41st St. Co.	156.42	148.40
	9	580	" " " " "	156.42	148.40
	10	581	Manhattan Navy Club	312.84	296.80
	12	582	Clarence S. Wadsworth	156.42	148.40
	17	584	M. E. Jackson	147.60	140.03
	16½	585	Jos. H. Mahon	147.60	140.03
	16	586	M. A. Jordan	147.60	140.03
	14	587	300 Madison Avenue	328.81	311.95
	14½	588	42nd St. & Madison Ave. Co.	92.41	87.67
1275	69	589	Farmers L. & Trust Co.	151.92	144.13
	70	590	Fieldston Realty Corp.	257.09	243.91
	71	591	Natl. Assn. Bldg. Corp.	184.14	174.70
	72	592	" " " "	186.98	177.39
	68	593	" " " "	156.49	148.47
	67	594	" " " "	155.63	147.65
	66	595	Jos. McGarrity	154.76	146.82
	65½	596	Thos. B. Clarke	153.90	146.01
	65	597	" " "	153.05	145.20
	64	598	" " "	147.89	140.31
	63	599	American Encaustic Tiling Co.	177.75	168.63
	61	600	18 E. 41st St. Inc.	355.95	337.70
	60	601	M. A. Kishadden	178.20	169.06
	59½	602	Manville Securities Co.	110.59	104.92
	59	603	" " "	245.52	232.93
	57	604	" " "	166.90	158.34
	56	605	E. S. Rockefeller	165.19	156.72
	17	606	Hy. W. Cannon	153.90	146.01
	16	607	" " "	153.90	146.01
	14	608	21 E. 40th St. Inc.	272.74	258.75
	1	609	Geo. L. Slawson	672.56	638.07
	6	610	Jas. S. Inglis Est.	129.86	123.20
	7	611	Egyptian Lacquer Mfg. Co.	118.94	112.84
	8	612	Thos. B. Clarke	119.89	113.74
	9	613	Metropolitan Credit Corp.	248.85	236.09
	11	614	Emily J. Adams	124.43	118.05
	12	615	Stafford Bros. Inc.	257.94	244.71
869	74	616	Fredk. W. Vanderbilt	1,008.50	956.78
	68	617	Wm. H. Penfold Est.	131.89	125.13
	67	618	Costihyan & Co.	131.89	125.13
	66	619	County & City Corp.	104.51	99.15
	64	620	M. Friedsman	253.82	240.80

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	61	621	J. Tishman	346.57	328.80
	59	622	E. Billings	120.96	114.76
	58	623	" "	138.55	131.45
	19	624	Geo. M. Miller	127.89	121.33
	18	625	" " "	117.23	111.22
	17	626	" " "	71.05	67.41
	16	627	Marian H. Wickes	97.96	92.94
	1	628	Jno. M. Bixby	476.96	452.50
	9	630	Wm. H. Penfold	71.10	67.45
	10	631	Brooklyn Imp. Co.	142.20	134.91
	12	632	M. Friedsman	68.26	64.76
	13	633	Geo. M. Miller	68.26	64.76
	14	633A	" " "	35.57	33.75
868	5	634	W. E. Maynard	47.09	44.68
137	75	634A	T. R. Butler	83.03	78.77
	4	635	Edwin Bergh Est.	34.56	32.79
	1	636	Hoffman Bros. Rlt. Co.	152.43	144.61
	70	637	David Keppel	71.10	67.45
	8	638	McDanten Rlty. Corp.	173.30	164.41
	10	639	Nools Corp.	173.30	164.41
	65	640	J. M. Thompson Est.	71.10	67.45
	64	641	Jno. W. Cox	71.10	67.45
	63	642	Geo. F. Baker	63.99	60.71
	62	643	" " "	63.99	60.71
	60	644	Florence B. Loew	145.80	138.32
	59	645	G. F. Baker, Jr.	72.90	69.16
	19	646	F. T. Baker	124.17	117.80
	16	647	G. F. Baker	142.90	135.57
	7	648	E. C. B. Cram	44.43	42.15
	74	649	A. Masterson	83.03	78.77
138	72	650	H. D. Hutchins	200.07	189.81
	12	651	John W. Cox	42.21	40.05
	13	652	" " "	42.21	40.05
	14	653	Geo. F. Baker, Jr.	42.21	40.05
	15	654	" " " "	42.21	40.05
867	70	655	415-5th Ave. Co.	267.97	254.23
	4	656	" " " "	202.00	191.64
	64	657	Chas. Scribner	79.01	74.96
	63	658	Bonwit Teller & Co.	39.50	37.47
	62	659	" " " "	39.50	37.47
	61	660	240 Madison Inc.	39.50	37.47
	57	661	Anahana Rlty. Corp.	150.10	142.40
	1	662	M. L. Impt. Co.	148.16	140.56
	9	663	A. J. Milbank	84.53	80.20
	12	664	Geo. Bliss Est.	39.55	37.52
	13	665	H. H. Jenkins	37.92	35.98
	14	666	" " "	41.09	38.98

	18	667	240 Madison Ave. Inc.	59.20	56.16	
	16	668	238 Madison Ave. Rlty. Corp.	54.00	51.23	
	15	669	H. H. Jenkins	32.00	30.36	
866	1	670	Realty Managers Corp.	159.81	151.61	
	3	671	Tiffany & Co.	74.59	70.77	
	76	672	" " "	272.77	258.78	
	71	673	Ella L. Kramer	79.01	74.96	
	68	675	L. Van Rensseller	41.09	38.98	
	67	676	Chas. E. Haviland	39.50	37.47	
	66	677	Wm. N. Crane	39.50	37.47	
	65	678	Emery L. Ferris	36.34	34.48	
	9	679	Susan A. Robbins	48.98	46.47	
	11	680	Chas. E. Haviland	116.93	110.93	
	13	681	" " "	39.50	37.47	
	14	682	" " "	39.50	37.47	
	15	683	Thomas B. Moran	39.50	37.47	140
	16	684	Jan. E. Orthoub	57.01	54.09	
	18	685	Vacation Assn. Inc.	43.07	40.86	
	19	686	Grace Humiston	38.00	36.05	
	20	687	Chas. A. Peabody	38.00	36.05	
	62	688	G. A. Gorman	41.04	38.94	
	63	689	Witherbee Rl. Est. & Fr. Co.	41.04	38.94	
	64	690	230 Madison Ave. Inc.	42.05	39.89	
865	1	691	Richard S. Ely Est.	40.40	38.33	
	2	692	Eliz. A. Titus Est.	39.20	37.19	
	3	693	Childs Co. Corp.	39.20	37.19	
	4	694	Marie T. Hadden	39.20	37.19	
	74	695	Adrian Iselin	49.01	46.50	
	73	696	Haliburton Fales	49.01	46.50	
	72	697	Geo. Bliss Est.	49.01	46.50	
	71	698	" " "	50.50	47.91	141
	69	699	Emma K. S. Flint	39.50	37.47	
	68	700	Frank G. Shattuck Co.	39.50	37.47	
	67	701	Jno. Pierpont Morgan Est.	39.50	37.47	
	66	702	Wm. W. Astor	39.50	37.47	
	65	703	" " "	39.50	37.47	
	64	704	" " "	39.50	37.47	
	63	705	" " "	39.50	37.47	
	62	706	" " "	39.50	37.47	
	5	707	Raxton Rlty. Co.	39.50	37.47	
	6	708	B. Altman & Co.	39.50	37.47	
	7	709	Edith T. Martin	39.50	37.47	
	8	710	Wm. W. Astor	39.50	37.47	
	9	711	" " "	39.50	37.47	
	10	712	" " "	39.50	37.47	
	11	713	" " "	39.50	37.47	

	12	714	" " "	39.50	37.47
	13	715	" " "	39.50	37.47
	14	716	" " "	37.62	35.69
	15	717	" " "	37.49	35.57
	16	718	" " "	37.49	35.57
	17	719	" " "	37.49	35.57
	58	720	" " "	37.49	35.57
	59	721	" " "	37.49	35.57
	60	722	" " "	37.49	35.57
	61	723	" " "	37.62	35.69
864	1	724	Jno. N. A. Griswold	1,248.19	1,184.18
	12	725	A. A. Carey	79.01	74.96
867	55	726	Wm. R. Jones	197.50	187.37
	51	727	Mary R. Sheldon	39.50	37.47
	50	728	G. H. Blandy	29.63	28.11
143	49	729	K. W. Kean	29.63	28.11
	48	730	" " "	29.63	28.11
	47	731	E. W. Humphreys	29.63	28.11
	46	732	G. T. Rafferty	39.50	37.47
	45	733	M. S. Burrill	39.50	37.47
	44	734	Hy. Rogers Est.	39.50	37.47
	43	735	Fluitlock Rlty. Co.	39.50	37.47
	20	736	Saml. Riker	40.00	37.95
	21	737	J. A. Townsend	39.60	37.57
	23	738	J. R. DeLamar Est.	78.40	74.38
	24	739	Chas. H. Diston	39.50	37.47
	25	740	Emily N. Trevor	39.50	37.47
	26	741	Horace Gray Est.	39.50	37.47
	27	742	Kate N. Winthrop	39.50	37.47
	28	743	" " "	39.50	37.47
	29	744	Cornelius Bliss Est.	39.50	37.47
144	30	745	Isaac How	39.50	37.47
	31	746	C. F. Bishop	39.50	37.47
	32	747	Chas. F. Roe	39.50	37.47
	33	748	Chas. H. Coster Est.	53.50	50.76
	35	749	Bertha H. Potter Est.	20.58	19.52
	36	750	Mary B. Potter Est.	20.58	19.52
	37	751	Jas. F. Fargo	33.28	31.57
	38	752	Grace R. Rogers	31.26	29.66
	39	753	L. P. Weeks	21.76	20.64
	40	754	S. A. French	21.76	20.64
	41	755	A. Stone Est.	21.76	20.64
	42	756	Gould Rlty. Co.	28.32	26.87
866	58	757	J. P. Morgan Est.	165.36	156.88
	25	758	" " " "	527.47	500.42
	33	758A	L. P. Satterlee	45.02	42.71

51	759	Sarah E. Lanier Est.	52.14	49.47
50	760	" " " "	79.01	74.96
48	761	Clarence L. Hay	39.50	37.47
47	762	Fredk. C. Havemeyer	39.50	37.47
46	763	Kate W. Winthrop	49.71	47.16
42	764	" " "	60.42	57.32
43	765	A. B. Jennings	49.47	46.93
39	766	E. W. Sheldon	40.32	38.25
38	767	E. T. Nicholas	40.32	38.25
37	768	Thos. Scott Est.	40.32	38.25
35	769	J. N. Delano	51.25	48.62
865 19	770	Church of Holy Incarnation	201.01	190.70
18	771	" " "	35.98	34.13
57	772	Fifth Avenue Rlty. Co.	51.60	48.95
55	773	" " "	50.91	48.30
53	774	M. O'Brien	70.29	66.69
50	775	Mary A. Hoyt	29.71	28.19
49	776	Gerald L. Hoyt	58.46	55.46
47	777	J. S. Morgan, Jr.	47.41	44.98
45	778	J. P. Hamilton	39.50	37.47
44	779	City Real Estate Co.	47.41	44.98
42	780	M. H. Pyne	39.50	37.47
41	781	Wm. C. Osborn	39.50	37.47
32	782	Women's City Club of N. Y.	52.80	50.09
24	782A	A. H. Torrey	39.50	37.47
34	783	E. F. Guthrie	48.00	45.54
25	783A	J. Morgan	39.50	37.47
35	784	A. V. N. Gamble	51.20	48.57
26	784A	J. P. Morgan Est.	31.60	29.98
36	784B	Unknown.	6.00	5.69
37	785	H. H. Flagler	76.86	72.92
27	785A	City Real Estate Co.	47.41	44.98
39	786	M. C. Osborn	42.01	39.86
29	786A	M. G. Howland	41.09	38.98
40	787	Wm. C. Osborn	47.04	44.63
30	787A	M. A. Kinnicult	45.82	43.47
864 25	788	Glengary Rlty. Corp.	79.07	75.02
23	789	B. Altman & Co.	78.93	74.88
58	790	" " " "	39.47	37.45
51	791	" " " "	39.47	37.45
55	792	" " " "	79.07	75.02
54	793	" " " "	32.91	31.22
53	794	Thomas B. Clarke	32.91	31.22
52	795	C. E. Woodbury	32.91	31.22
51	796	26 E. 35th Rlty. Corp.	32.91	31.22
50	797	Jno. Q. Sargent Est.	32.91	31.22

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	49	798	Alice Connelly	32.91	31.22
	48	799	J. M. Brown	39.50	37.47
	47	800	C. B. Knapp	39.50	37.47
	46	801	Chas. H. Werner	39.50	37.47
	45	802	Geo. F. Butterworth	24.37	23.12
	44	803	A. L. Winters	24.37	23.12
	43	804	A. B. Davis	24.37	23.12
	42	805	V. B. Gibney	24.37	23.12
	41	806	" " "	24.37	23.12
	26	807	B. Altman & Co.	39.50	37.47
	27	808	Harriet N. Pond	39.50	37.47
	28	809	Wm. C. Lush	39.50	37.47
	29	810	W. A. Bloodgood	39.50	37.47
	30	811	E. G. Watson	39.50	37.47
149	31	812	J. M. Mooney	39.50	37.47
	32	813	L. B. Conkling	39.50	37.47
	33	814	J. A. Trowbridge	39.50	37.47
	34	815	A. L. Trowbridge	38.00	36.05
	35	816	Unitarian Church of Messiah	172.00	163.18
893	1	817	A. B. Reese	32.00	30.36
	2	818	Rapid Transit Subway Const. Co.	26.88	25.50
	3	819	" " " " "	34.98	33.19
	5	820	A. L. Douglas	32.00	30.36
	92	821	Fredk. N. Devoe Est.	32.00	30.36
	91	822	Geo. A. Plimpton	31.46	29.85
	90	823	Collis P. Huntington	63.46	60.21
	88	824	M. T. Knowlton	31.60	29.98
	87	825	K. S. Kilborne	31.60	29.98
	86	826	D. R. Nagel	31.60	29.98
	85	827	Wm. H. L. Edwards	31.60	29.98
150	84	828	W. S. Adams	31.60	29.98
	83	829	A. E. Nicholas	24.50	23.24
	82	830	N. T. Pulsifer	22.13	21.00
	81	831	C. H. Aldrich	22.13	21.00
	80	832	A. E. Erikson	22.13	21.00
	79	833	Ralph Holden	22.13	21.00
	78	834	C. Isham	22.13	21.00
	77	835	H. G. Bugbee	18.96	17.99
	76	836	A. D. Huntington	43.44	41.21
	6	837	A. B. Reese	39.50	37.47
	7	838	J. B. Slade	33.18	31.48
	8	839	J. A. Renwich	33.18	31.48
	9	840	Ellen Kent Est.	33.18	31.48
	10	841	Geo. W. Nash Est.	33.18	31.48
	11	842	H. E. Kremer	31.60	29.98
	12	843	J. T. Philips	33.18	31.48

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13	844	A. M. E. Peters	39.50	37.47
14	845	" " " "	39.50	37.47
15	846	F. R. Irving Est.	39.50	37.47
16	847	Robert Hoe	25.60	24.29
75	848	R. D. Barcolow Est.	7.92	7.51
74	849	I. M. Adams	7.92	7.51
73	850	F. N. Watriss	7.92	7.51
72	851	J. H. Henshaw	7.92	7.51
71	852	" " "	7.92	7.51
70	853	Phelps Stokes Est.	39.47	37.45
69	854	Wm. H. Lefferts Est.	39.47	37.45
68	855	H. Herbeck	39.47	37.45
21	856	L. M. Triest	30.00	28.46
20	857	M. L. Warrin	25.60	24.29
19	858	S. E. Williams	25.60	24.29
18	859	J. J. Riker	25.60	24.29
17	860	F. W. Hunter Est.	25.60	24.29
692 1	861	G. S. Bowdoin Est.	81.90	77.70
3	862	E. R. Shaw	42.00	39.85
4	863	S. L. Fuller	42.00	39.85
85	864	47 Park Ave. Inc.	165.90	157.39
81	865	Temple Bowdoin	39.50	37.47
80	866	K. J. Whipple	39.50	37.47
79	867	J. N. Nichols	39.50	37.47
78	868	J. J. Riker	39.50	37.47
77	869	" " "	31.60	29.98
76	870	L. D. Johnson	31.60	29.98
75	871	A. H. Borland	31.60	29.98
74	872	R. Terry, Jr.	31.60	29.98
73	873	Wm. C. Fargo	31.60	29.98
5	874	M. N. Hoffman	39.50	37.47
6	875	C. S. Endicott	39.50	37.47
7	876	Eliz. A. Sherwood	39.50	37.47
8	877	F. T. Pennoyer	38.32	36.35
9	878	G. [illegible] Turmure	38.32	36.35
10	879	Geo. Woolsey	26.34	24.99
11	880	H. C. Pell	26.34	24.99
12	881	H. F. Draper	26.34	24.99
13	882	E. Shuman Heink	22.13	21.00
14	883	E. S. Elliott	22.13	21.00
15	884	E. S. Dickinson	23.87	22.65
16	885	L. Bladgen	23.87	22.65
17	886	Wm. A. Delano	23.87	22.65
18	887	Mary Collins	23.87	22.65
19	888	J. P. Morgan	23.87	22.65
20	889	S. I. Connor	39.20	37.19

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	66	890	M. H. Maynard	39.20	37.19
	67	891	E. A. Dennison	32.93	31.24
	72	892	H. S. Fargo	25.76	24.44
	71	893	G. Patridge	14.90	14.14
	70	894	J. M. Hitrot	14.82	14.06
	69	895	A. S. Walker	14.82	14.06
	68	896	G. T. Cumnock	15.02	14.25
891	1	897	J. H. Robb Est.	63.23	59.99
	3	898	Chet. Rlty. Corp.	31.58	29.96
	4	899	Edw. F. Whitney	31.58	29.96
	92	900	M. H. S. Young	40.32	38.25
	91	901	Jno. B. Webb	15.10	14.33
	90	902	J. A. Wheelock	15.14	14.36
	89	903	P. D. Austin	15.06	14.29
155	88	904	G. S. Bowdoin	15.71	14.90
	87	905	F. J. Roe	21.62	20.51
	86	906	C. Jacobs	21.62	20.51
	85	907	H. D. Potter	21.23	20.14
	84	908	K. T. Moore	39.50	37.47
	83	909	M. Parsons	39.50	37.47
	82	910	Brick Pres. Church	40.29	38.22
	81	911	A. M. Warren	38.70	36.72
	80	912	Hy. C. Sturges	39.50	37.47
	79	913	DeForest Est.	39.50	37.47
	78	914	M. W. Stivinson	39.50	37.47
	77	915	M. D. Graham	39.50	37.47
	5	916	E. F. Whitney	39.50	37.47
	6	917	G. W. Brown	29.63	28.11
	7	918	W. S. Brown	29.63	28.11
	8	919	Chas. Friller	29.63	28.11
156	9	920	V. L. Kent	29.63	28.11
	10	921	A. A. Roberts	19.09	18.11
	11	922	L. P. Tonnde	19.09	18.11
	12	923	G. Schirmer	34.75	32.97
	13	924	R. W. Elliot	22.13	21.00
	14	925	Wm. C. LeGendre	22.13	21.00
	15	926	Jas. F. D. Lanier	52.67	49.97
	17	927	E. Conway	26.34	24.99
	18	928	A. F. Robinson	23.71	22.49
	19	929	H. D. Potter Est.	23.71	22.49
	20	930	Pan Hellenic Union	23.71	22.49
	21	931	S. A. Anthony Est.	23.71	22.49
	22	932	Jas. N. Smyth	23.71	22.49
	76	933	Wm. E. Studdiford	19.92	18.90
	75	934	Marion T. Lyman	19.55	18.55
	74	935	H. B. Armstrong	19.55	18.55
	73	936	A. K. Carmalt	19.55	18.55

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72	937	F. Norton Goddard Est.	19.55	18.55
71	938	A. H. Van Brunt	20.35	19.31
23	939	Jos. Larocque, Jr.	39.47	37.45
70	940	P. J. Flannery	39.47	37.45
890 84	941	Harry A. Day	21.12	20.04
85	942	A. M. Flagler Est.	21.12	20.04
86	943	E. C. Converse	21.02	20.04
87	944	Wm. B. Coley	25.60	24.29
88	945	T. Damon	25.60	24.29
5	946	O. P. Billings Est.	25.60	24.29
4	947	F. W. Noyes	35.54	33.72
3	948	M. W. N. Sierch	32.00	30.36
2	949	C. B. Porter	36.93	35.04
1	950	M. W. Bacon	40.00	37.95
83	951	Moodno Farms Inc.	26.34	24.99
82	952	Flintlock Rlty. Co.	26.34	24.99
81	953	M. F. Wendall	26.34	24.99
80	954	Geo. A. H. Churchill	26.34	24.99
79	955	Equitable Trust Co.	26.34	24.99
78	956	W. E. Lambert	26.34	24.99
77	957	Ch. of New Jerusalem	118.51	112.43
74	958	G. Wendell Est.	36.70	34.82
73	959	I. P. Stephens	36.70	34.82
72	960	S. W. Lambert	36.70	34.82
71	961	E. B. Van Dusen	23.39	22.19
7	962	Bd. of Home Missions of Reformed Ch.	32.38	30.72
8	963	E. L. Keys, Jr.	33.18	31.48
9	964	Renniese Process Inc.	33.18	31.48
10	965	Paul L. Phelan	33.18	31.48
11	966	A. L. Henshaw Est.	33.18	31.48
12	967	117 E. 34th St. Corp.	33.18	31.48
13	968	C. G. Theband Est.	35.95	34.11
14	969	M. B. Wooley	35.95	34.11
15	970	Hartford Holding Co.	35.95	34.11
16	971	C. A. Brundage Est.	35.95	34.11
17	972	Folsom Bros. Inc.	22.53	21.37
18	973	Lexington-34th St. Rlty. Co.	22.53	21.37
19	974	" " " " "	22.53	21.37
20	975	F. T. Bowers	23.04	21.86
70	976	M. Currier	23.04	21.86
69	977	J. Z. Bailey	22.88	21.71
68	978	J. W. Bell	23.52	22.31
67	979	H. G. Ogden	26.61	25.25
22	980	Lexington-34th St. Rlty. Co.	27.63	26.21
21	981	" " " " "	29.02	27.53

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893	64	982	Y. W. C. A.	39.60	37.57
	65	983	Wm. F. Bridge Est.	39.47	37.45
	66	984	Chas. C. Spear	39.47	37.45
	67	985	Log Realty Co.	39.66	37.63
	22	986	M. E. Enos	34.30	32.54
	23	987	R. W. Goelet	31.20	29.60
	24	988	" " "	27.73	26.31
	25	989	" " "	30.00	28.46
	26	990	M. T. Duryee	34.61	32.84
	27	991	C. F. Roth	31.60	29.98
	28	992	W. P. Butler	31.60	29.98
	29	993	A. Rucker	25.28	23.98
	30	994	S. F. Cutcheon	25.28	23.98
	31	995	C. Straiton	22.13	21.00
	32	996	Ladies Christian Union	22.13	21.00
161	33	997	" " "	32.67	30.99
	34	998	" " "	21.28	20.19
	35	999	" " "	28.40	26.94
	36	1000	" " "	28.91	27.43
	37	1001	G. D. Partridge	28.91	27.43
	38	1002	M. Dann	18.78	17.82
	39	1003	E. L. Auchmuty	18.78	17.82
	40	1004	Henry Hof	18.43	17.48
	63	1005	C. C. Burlingham	31.60	29.98
	62	1006	Hy. C. Meyer	31.60	29.98
	61	1007	F. H. Fischer	31.60	29.98
	60	1008	W. M. Leslie et al.	31.60	29.98
	59	1009	C. H. Shedd	31.60	29.98
	58	1010	M. L. M. Whitman	31.60	29.98
	57	1011	H. C. Jones	46.11	43.75
	56	1012	C. Gallagher	34.77	32.99
162	55	1013	J. C. Hart Rlty. Co.	33.97	32.23
	54	1014	C. M. Gillett	16.64	15.79
	53	1015	A. A. Robbins	16.64	15.79
	52	1016	John Jay et al.	16.64	15.79
	51	1017	A. L. Elmendorf	16.64	15.79
	50	1018	J. G. DeLa M. Borghun	48.24	45.77
	49	1019	Peter Frees, Jr.	23.95	22.72
	48	1020	Sam'l. Katz	23.36	22.16
	47	1021	M. McNamara	23.36	22.16
	46	1022	J. F. Pfeifer	23.30	22.11
	45	1023	" " "	22.34	21.19
	44	1024	R. E. Bohlen	22.34	21.19
	43	1025	M. Faulkner, et al.	32.00	30.36
	42	1026	Henry Hof	32.00	30.36
	41	1027	Lillian Hof	34.56	32.79

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892	62	1028	P. L. Crovat Est.	32.00	30.36
	63	1029	K. di P. Pease	29.12	27.63
	64	1030	Royal Whitman	32.64	30.97
	65	1031	O. D. Munn	32.64	30.97
	22	1032	Bryn Maur Club of City of N. Y.	61.20	48.57
	23	1033	C. Stimson	38.50	36.53
	24	1034	H. L. Stimson	28.80	27.32
	25	1035	A. V. Goddard	39.52	37.49
	26	1036	M. T. Duryee	36.34	34.48
	61	1037	Theo. V. A. Trotter	31.60	29.98
	60	1038	J. G. Floyd Est.	31.60	29.98
	59	1039	G. O'Hanlon	25.28	23.98
	27	1040	C. F. Roth	31.60	29.98
	58	1041	I. H. Whittlesey	25.28	23.98
	28	1042	W. P. Butler	26.86	25.48
	57	1043	J. W. Stephens Rlty. Inc.	22.13	21.00
	29	1044	A. Rucker	31.60	29.98
	56	1045	A. Kauser	22.13	21.00
	30	1046	S. F. Cutcheon	31.60	29.98
	55	1047	J. C. G. Huppel	31.60	29.98
	54	1048	M. E. Morton	31.60	29.98
	31	1049	Christine Straiton et al.	30.02	28.48
	32	1050	Ladies Christian Union	30.02	28.48
	53	1051	A. A. C. Montague	31.60	29.98
	52	1052	S. G. Mulhall	31.60	29.98
	33	1053	Ladies Christian Union	24.50	23.24
	34	1054	" " "	24.50	23.24
	51	1055	S. L. Sutton	31.60	29.98
	35	1056	Ladies Christian Union	24.50	23.24
	36	1057	" " "	24.50	23.24
	50	1058	W. N. Tompkins	31.60	29.98
	49	1059	M. E. Eberle	31.60	29.98
	37	1060	163 E. 36th St. Corp.	31.60	29.98
	48	1061	D. L. W. O'Connor	22.05	20.92
	38	1062	163 E. 36th St. Corp.	26.32	24.97
	47	1063	C. S. Bayles Est.	29.44	27.93
	46	1064	Yale University of New Haven	29.31	27.81
	45	1065	" " " " "	29.44	27.93
	44	1066	" " " " "	37.39	35.47
	43	1067	" " " " "	36.80	34.91
	42	1068	" " " " "	29.44	27.93
	41	1069	" " " " "	25.28	23.98
	40	1070	" " " " "	25.28	23.98
	39	1071	E. C. Gerdes	25.28	23.98
891	27	1072	P. E. Church of Epiphany	163.95	155.54
	24	1073	" " " "	33.55	31.83
	69	1074	A. Kambourian	24.99	23.71

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	68	1075	W. H. Russell	24.99	23.71
	67	1076	" " "	24.99	23.71
	66	1077	" " "	75.12	71.27
	62	1078	J. H. Kramer et al	98.75	93.69
	59	1079	" " " " "	98.75	93.69
	58	1080	A. V. M. Gamhill	12.96	12.30
	57	1081	" " " "	12.96	12.30
	56	1082	G. V. Wiseman	12.96	12.30
	55	1083	Hy. Clews	25.92	24.59
		1084		28.45	26.99
	48	1085	B. W. Gillette	12.96	12.30
	49	1086	C. Tolfre Est.	12.96	12.30
	50	1087	H. W. Frismuth	12.96	12.30
	51	1088	I. Von Linden Est.	12.96	12.30
	52	1089	Temple Bordoin Est.	12.96	12.30
167	46	1090	E. H. Coster Est.	79.01	74.96
	45	1091	Hy. C. School	39.50	37.47
	44	1092	Jno. Martin	39.50	37.47
	29	1093	F. S. Hastings	32.16	30.51
	30	1094	Porterfield Constr. Co.	121.82	115.57
	34	1095	T. L. Broadway Est.	41.87	39.72
	35	1096	C. C. Tegethoff	39.50	37.47
	36	1097	Temple Boudoin Est.	36.34	34.48
	37	1098	E. P. Coster	36.34	34.48
	38	1099	J. Russell Est.	31.60	29.98
	43	1100	" " "	23.71	22.49
	42	1101	" " "	23.71	22.49
	41	1102	" " "	23.71	22.49
	40	1103	" " "	23.71	22.49
	39	1104	" " "	31.58	29.96
	64	1105	Packard Commercial School	117.68	111.65
168	65	1106	H. A. Bell	41.33	39.21
	66	1107	J. Renehan	32.00	30.36
	23	1108	C. L. Brown	32.00	30.36
	24	1109	J. L. Nourse	25.60	24.29
	25	1110	C. H. Russell Est.	26.88	25.50
	26	1111	Wm. Connor	26.88	25.50
	27	1112	A. M. Shrady	29.44	27.93
	28	1113	Terminal Rlty. Co.	23.81	22.59
	29	1114	F. M. Knowles	28.00	26.56
	30	1115	Alex Wolff	28.00	26.56
	61	1116	C. C. Nadol	23.01	21.83
	31	1117	P. A. Gerry Est.	28.00	26.56
890	32	1118	C. T. Reiley Est.	33.33	31.62
	60	1119	T. McIlvaine	23.01	21.83
	59	1120	" "	23.01	21.83

33	1121	N. J. Douglass	33.33	31.62
57	1122	Durham Rlty. Corp.	69.15	65.60
34	1123	G. G. Moore	133.33	126.49
54	1124	S. Katz	102.96	97.68
38	1125	C. E. Goodhue	24.40	23.15
53	1126	M. Pollard Est.	23.41	22.21
39	1127	C. E. Goodhue	20.13	19.08
52	1128	City of N. Y.	69.58	66.01
41	1129	Purchase Holding Corp.	83.62	79.33
49	1130	J. Goldwater	35.01	33.21
48	1131	L. Schum Est.	35.01	33.21
47	1132	Newhold Edgar et al.	35.01	33.21
46	1133	Maybelle Rlty. Co.	35.01	33.21
45	1134	" " "	25.60	24.29
44	1135	Geo Ehret	25.20	23.91
43	1136	Wm. L. Cole Est.	22.22	21.08
42	1137	A. H. Bultman Est.	19.22	18.23
918 57	1138	Jas. Rozell Est.	26.88	25.50
58	1139	C. Corcoran Est.	26.88	25.50
59	1140	E. V. Von E. Wendell	26.88	25.50
60	1141	M. B. Beinhauer	29.41	27.90
61	1142	F. Beinhauer Est.	25.79	24.47
4	1143	M. E. A. Wendel	41.44	39.31
3	1144	L. H. Clausnitzen	41.44	39.31
1	1145	M. E. A. Wendel	55.34	52.50
5	1146	" " " "	27.68	26.26
7	1147	Jos. Hall et al.	42.62	40.43
8	1148	" " " "	79.50	75.42
10	1149	Lee Holstein	25.20	23.91
11	1150	" "	24.56	23.30
12	1151	" "	23.92	22.69
13	1152	L. Bergen	34.69	32.91
14	1153	N. Y. Telephone Co.	146.91	139.38
56	1154	J. G. Weigold	28.22	26.77
55	1155	Wm. H. Brew	28.22	26.77
53	1156	Hulbert Peck	32.53	30.86
52	1157	Hy. A. Bade	45.98	43.62
51	1158	" " "	47.49	45.05
50	1159	J. G. G. Huppel Brewing Co.	42.85	40.65
48	1160	" " " " " "	56.45	53.56
47	1161	" " " " " "	36.29	34.43
46	1162	" " " " " "	36.29	34.43
45	1163	" " " " " "	40.32	38.25
17	1164	Geo. P. Reinhart	28.93	27.45
18	1165	Alice M. Swift	27.49	26.08
21	1166	City of N. Y.	541.31	513.55
35	1167	Hugo Lassner	25.70	24.38

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	34	1168	K. Holm	24.96	23.68
	33	1169	" "	24.96	23.68
	32	1170	" "	24.96	23.68
	31	1171	A. Iquinto et al.	24.96	23.68
	30	1172	A. Goldberg	21.34	20.25
	29	1173	R. Katz	21.34	20.25
	28	1174	M. Aaron et al.	21.34	20.25
	27	1175	A. M. Harris	31.58	29.96
	25	1176	E. E. Hartzell	31.68	30.36
917	56	1177	Peter Doelger Rlty Co.	39.60	35.57
	57	1178	E. Dewender	39.47	37.45
	58	1179	N. Hebald et al.	39.47	37.45
	59	1180	N. Hebald	39.47	37.45
	4	1181	A. Dode et al.	39.47	37.45
173	3	1182	Wm. F. Mittendorf	39.47	37.45
	2	1183	E. A. Corcoran Est.	39.47	37.45
	1	1184	M. Betzeman	31.68	30.06
	5	1185	" "	7.92	7.51
	6	1186	B. Altman & Co.	430.54	408.46
	51	1187	Geo. H. Jones	39.50	37.47
	50	1188	Jno. J. Radley	39.50	37.47
	49	1189	" " "	39.50	37.47
	47	1190	218 E. 37th St. Co.	79.01	74.96
	15	1191	E. A. Beckel	105.52	100.11
	46	1192	J. G. McCarthy	27.39	25.99
	44	1193	Fredk. Vogel Est.	54.18	51.40
	17	1194	Sisters of Charity	107.70	102.18
	42	1195	Chas. Grimmer et al.	36.40	34.53
	20	1196	Sisters of St. Vincent de Paul	31.60	29.98
	41	1197	Otto Grimmer	31.60	29.98
174	21	1198	Joseph F. Boyle	31.60	29.98
	40	1199	Chas. Grimmer et al.	31.60	29.98
	22	1200	Thomas Madden Est.	31.60	29.98
	23	1201	F. A. McConnell	31.60	29.98
	38	1202	J. Barnett	63.20	59.96
	24	1203	E. F. H. Fogarty, et al.	31.60	29.98
	37	1204	Robt. E. Kelly	31.60	29.98
	36	1205	Thos. F. Quinlan	15.81	15.00
	35	1206	" " "	15.81	15.00
	25	1207	E. F. Fogarty et al.	24.96	23.68
	34	1208	E. E. Hartzell	25.74	24.42
	33	1209	J. P. Mulvey	25.66	24.34
	32	1210	J. A. Humes	41.44	39.31
	31	1211	M. Humes	31.09	29.50
	30	1212	D. A. McAuliffe	31.09	29.50
	29	1213	C. V. McAuliffe	28.80	27.32

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	28	1214	H. Butchemkirch	25.17	23.88
	27	1215	" "	33.63	31.91
	26	1216	Peter Doelger Rlty Co.	32.00	30.36
916	61	1217	Wm. F. Mulcahy et al.	25.34	24.04
	62	1218	" " " " "	25.26	23.96
	63	1219	Joseph Kaplan	39.47	37.45
	64	1220	E. A. Gardner	49.34	46.81
	5	1221	C. A. Koch	39.47	37.45
	4	1222	C. Hoenninger	18.66	17.70
	3	1223	" "	18.40	17.46
	2	1224	" "	18.32	17.38
	1	1224A	E. Arnstein et al.	18.32	17.38
	6	1225	" " " "	23.02	21.84
	7	1226	" " " "	21.84	20.72
	8	1227	M. L. Campion	31.60	29.98
	60	1228	Wm. F. Mulcahy	28.46	27.00
	58	1229	Wm. Thomas	29.63	28.11
	9	1230	Jas. McCartney Est.	31.60	29.98
	57	1231	" " "	39.50	37.47
	10	1232	Jno. Gallagher Est.	31.60	29.98
	11	1233	David McFall	31.60	29.98
	56	1234	T. Seligman	39.50	37.47
	12	1235	Jas. G. Shand Est.	31.60	29.98
	55	1236	T. A. Fitzsimons	39.50	37.47
	13	1237	L. J. Marx	85.33	80.95
	54	1238	T. A. Fitzsimons	36.34	34.48
	53	1239	J. A. Fitzsimons	42.67	40.48
	15	1240	A. R. Boyce	55.97	53.10
	52	1241	C. Keogh	39.50	37.47
	51	1242	T. B. Owen	31.60	29.98
	17	1243	J. Murray Est.	64.14	60.85
	50	1244	P. Tenzer	63.20	59.96
	19	1245	M. Wise Est.	31.60	29.98
	48	1246	A. T. Walton	39.50	37.47
	20	1247	C. E. Kessler Est.	31.60	29.98
	47	1248	Anne Katz	39.50	37.47
	21	1249	M. A. Byrne	31.60	29.98
	46	1250	Anne Katz	39.50	37.47
	22	1251	M. Lindsay	31.60	29.98
	23	1252	Wm. E. White	26.34	24.99
	45	1253	M. F. Downs	61.73	58.56
	44	1253A	" " "	17.28	16.39
	24	1254	B. Fergg	26.34	24.99
	25	1255	C. Maloney	26.34	24.99
	42	1256	C. M. Stegman	39.50	37.47
	26	1257	J. J. Reynolds	39.50	37.47
	41	1258	J. Callanan	39.50	37.47

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	27	1259	J. J. Reynolds	36.34	34.48
	28	1260	C. H. Douglass	15.42	14.63
	29	1261	C. C. Ardolino	15.42	14.63
	37	1262	Sol. Haas	39.52	37.49
	36	1263	" "	39.52	37.49
	35	1264	Meyer Plate Glass Co.	39.52	37.49
	34	1265	Yetta Goldstein	39.52	37.49
	33	1266	Harris E. Goldstein	41.10	38.99
	32	1267	" " "	41.10	38.99
	31	1268	K. L. Cullom	24.11	22.87
	30	1269	" " "	24.11	22.87
915	61	1270	J. H. Kroger	18.72	17.76
	62	1271	L. W. Wilkins	17.60	16.70
	63	1272	C. Hoeninger	17.41	16.52
	64	1273	J. S. Banghman	17.41	16.52
179	60	1273A	E. D. McGreat	23.71	22.49
	65	1274	E. C. Sackett	39.47	37.45
	4	1275	M. C. McCann	39.47	37.45
	3	1276	M. A. Pooler	39.47	37.45
	2	1277	R. L. Irving	39.47	37.45
	1	1278	J. A. Brahman	39.60	37.57
	5	1279	John Putie	39.50	37.47
	6	1280	211 E. 34th St. Rlty. Co.	19.76	18.75
	7	1281	" " " " " "	19.76	18.75
	8	1282	Cath. Neus	29.63	28.11
	9	1283	Wm. J. Leagenbee	29.63	28.11
	10	1284	" " "	29.63	28.11
	11	1285	" " "	29.63	28.11
	58	1286	A. W. Byrne	19.76	18.75
	59	1286A	Seligman Hanan	23.71	22.49
	57	1287	A. W. Byrne	20.02	18.99
180	56	1288	V. Borras	39.50	37.47
	55	1289	S. Barrington	26.34	24.99
	54	1290	Jno. Gallagher	26.34	24.99
	53	1291	H. Q. Wolters	26.34	24.99
	52	1292	A. F. Warburton Est.	26.34	24.99
	51	1293	A. J. Conner	26.34	24.99
	19	1294	Borden Farm Products	252.80	239.84
	50	[illegible]	E. A. Lubbe	26.34	24.99
	49	1296	Jno. R. Keating	34.77	32.99
	48	1296A	" " "	45.28	42.96
	47	1297	" " "	31.60	29.98
	46	1298	" " "	30.75	29.17
	45	1299	Jacob Metsch	31.41	29.80
	44	1300	" "	39.50	37.47
	20	1301	J. J. Courtney	39.50	37.47

43	1302	J. L. Keating	39.50	37.47	
21	1303	C. E. Conroy	39.50	37.47	
42	1304	C. A. Britton	26.59	25.23	
41	1305	A. W. Crockett	25.81	24.49	
22	1306	J. Garvey Est.	39.50	37.47	
40	1307	E. Conlon	26.59	25.23	
23	1308	Manhattan R. R. Co.	79.00	74.95	
39	1309	Wm. H. Stemkamp	39.50	37.47	
38	1310	" " "	39.50	37.47	
26	1311	F. M. Goddard	37.92	35.98	
37	1312	Wm. H. Stemkamp	37.92	35.98	
36	1313	" " "	24.42	23.17	
35	1314	" " "	23.92	22.69	
34	1315	Path Tierney	23.92	22.69	
33	1316	Moses Stein	23.92	22.69	
32	1317	S. Schwartz	23.92	22.69	182
31	1318	H. A. Solomon	23.92	22.69	
30	1319	T. F. Quinlan	23.92	22.69	
29	1320	Sam'l Haas	23.92	22.69	
28	1321	L. M. Houghton	23.57	22.36	
27	1322	W. A. Openhym	24.78	23.51	
1285 1	1323	Geo. Kemp R. E. Co.	80.08	75.97	
2	1324	" " " " "	44.80	42.50	
4	1325	" " " " "	81.39	77.22	
71	1326	Democratic Club	67.20	63.75	
69	1327	Geo. Kemp R. E. Co.	381.97	362.38	
9	1328	H. Amerman	35.66	33.83	
64	1329	N. A. Berwin	34.38	32.62	
10	1330	C. B. Stone	35.66	33.83	
11	1331	C. S. Kurzman	35.66	33.83	
63	1332	S. F. Dewing	34.38	32.62	183
62	1333	C. V. Twiss Est.	34.38	32.62	
12	1334	15 E. 49th St. Inc.	53.49	50.75	
61	1335	S. T. Sees	34.70	32.92	
13	1336	U. S. Trucking Co.	40.16	38.10	
59	1337	Hampton Shops Inc.	90.27	85.64	
14	1338	M. C. Morrison	40.16	38.10	
58	1339	Almy Realty Corp.	22.85	21.68	
57½	1340	" " "	22.40	21.25	
57	1341	" " "	22.40	21.25	
56½	1342	" " "	22.40	21.25	
56	1343	" " "	22.40	21.25	
17	1344	" " "	22.40	21.25	
16½	1345	" " "	22.40	21.25	
16	1346	" " "	22.40	21.25	
15½	1347	" " "	22.40	21.25	
15	1348	" " "	22.85	21.68	

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	1284	69	1349	Eliz. W. White	44.80	42.50
		70	1350	C. White	40.00	37.95
		71	1351	Frederics Inc.	40.00	37.95
		72	1352	M. H. Clemens	35.86	34.02
		4	1353	T. B. Flower	43.20	40.98
		1	1354	R. Goelet	85.46	81.08
		5	1355	I. B. Flower	40.16	38.10
		68	1356	E. W. White	40.16	38.10
		6	1357	N. Y. Billa Society	41.76	39.62
		67	1358	E. W. White	40.16	38.10
		7	1359	A. Polifiene	38.56	36.58
		66	1360	E. W. White	40.16	38.10
		8	1361	M. N. Perkins	40.16	38.10
		65	1362	Mordecai Rlty. Co.	25.97	24.64
		64½	1362A	" " "	25.97	24.64
185		9	1363	M. C. Morrison	40.16	38.10
		10	1363A	E. 48th St. Corp.	80.32	76.20
		63	1364	Nestle Patent Holding Co.	68.54	65.03
		62	1365	E. Ehrmann	40.16	38.10
		12	1366	R. S. Bargaghi	40.16	38.10
		61	1367	Centre-White Co.	40.16	38.10
		13	1368	19 E. 48th St. Inc.	40.16	38.10
		60	1369	D. M. Morrison	40.16	38.10
		59	1370	C. A. Grant Est.	40.64	38.56
		58	1371	Advocate Rlty. Co.	23.22	22.03
		57	1372	" " "	20.48	19.43
		56	1373	" " "	25.66	24.34
		55	1374	C. R. Robinson	28.06	26.62
		17	1375	C. S. Day	52.50	49.81
		16	1376	K. Dows Est.	37.09	35.19
		15	1377	Butnell Bldg. Corp.	36.48	34.61
186		14	1378	T. J. S. Flint	41.04	38.94
	1283	69	1379	R. W. Goelet	180.00	95.63
		71	1380	" " "	40.00	37.95
		72	1381	587—5th Ave. Inc.	60.00	56.92
		4	1382	Warren C. Beach	30.40	28.84
		2	1383	Marcus Daly	62.40	59.20
		1	1384	H. M. G. Shepard	67.84	64.36
		5	1385	" " " "	40.16	38.10
		6	1386	Robt. W. Goelet	40.16	38.10
		67	1387	" " "	40.16	38.10
		7	1388	Islebrook Estates Inc.	40.16	38.10
		66	1389	E. Randolph	40.16	38.10
		8	1390	H. G. Huntington	40.16	38.10
		64	1391	L. M. Gerry Est.	80.32	76.20
		9	1392	A. A. Dortie Est.	40.16	38.10

	10	1393	H. G. Trunbower	40.16	38.10
	63	1394	Zone Trading Corp.	40.16	38.10
	11	1395	Titus E. Eddy	40.16	38.10
	62	1396	J. A. Benjamin	40.16	38.10
	12	1397	G. M. Pinchot	40.16	38.10
	61	1398	Julia Ward	40.16	38.10
	13	1399	J. H. Smith	40.56	38.48
	60	1400	Advocate Rlty. Co.	40.56	38.48
	14	1401	Abr. Jacob Est.	53.81	51.05
	59	1402	Advocate Rlty. Co.	40.16	38.10
	15	1403	M. E. McCormick	26.78	25.41
	58	1404	R. A. McEgan	40.16	38.10
	17	1405	F. B. A. Fisch	71.89	68.20
	56	1406	S. H. Weinberg	71.89	68.20
1282	65	1407	R. L. Gerry	321.28	304.80
	64	1408	" " "	128.51	121.92
	56	1409	" " "	224.90	213.37
	1	1410	E. T. Gerry	289.15	274.32
	8	1411	" " "	160.64	152.40
	17	1412	Robt. Goelet	224.90	213.37
1285	53	1413	L. T. Taylor	36.00	34.15
	52	1414	A. T. Thorne Est.	41.20	39.09
	51	1415	Annie Stone	43.38	41.16
	54	1416	Jas. B. Haggin Est.	36.80	34.91
	24	1417	E. Bradley	31.39	29.78
	21	1418	J. C. Davies	111.58	105.86
	25	1419	A. W. D. Burden	32.13	30.48
	25½	1420	C. P. Latting	32.13	30.48
	50	1421	S. J. Grinnell	36.94	35.05
	26	1422	A. W. Hodges	32.13	30.48
	49	1423	38 E. 50th St. Corp.	36.94	35.05
	27	1424	R. P. Carroll	35.34	33.53
	48	1425	Collectors Galleries Inc.	36.94	35.05
	28	1426	C. D. M. Cardeza	35.34	33.53
	47	1427	G. D. Stewart	35.34	33.53
	29	1428	E. S. Sidenburg	32.13	30.48
	46	1429	J. A. Bensel	33.73	32.00
	30	1430	E. H. Redfield	33.73	32.00
	45	1431	Mildred Milton	32.13	30.48
	31	1432	L. B. Squier	33.73	32.00
	44	1433	M. B. Gilbert	30.53	28.96
	43	1434	G. W. H. Woodruff	30.53	28.96
	36	1435	N. Y. State Rlty. & Term. Co.	444.96	422.14
1284	52½	1437	A. B. Bruns	34.94	33.15
	23	1438	Beckman Estate	93.60	88.80
	22	1439	" "	31.20	29.60

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	21	1440	Francis Hustace Est.	35.00	33.39
	52	1441	H. H. Tyson	25.94	24.61
	51	1442	A. W. Sherman	25.94	24.61
	50½	1443	H. Whitehouse	25.94	24.61
	50	1444	W. D. Murphy	25.94	24.61
	48	1445	Aimore Mfg. Co.	69.07	65.53
	25	1446	Harry Parker	26.78	25.41
	26	1447	N. Y. C. & H. R. R. Co.	224.37	212.86
	47	1448	Albert Cordes	33.73	32.00
	46	1449	Excelsior Estates Co.	40.16	38.10
	30	1451	N. Y. Central R. R. Co.	192.80	182.91
	33	1452	" " " " " "	399.41	378.93
1283	21	1453	" " " " " "	693.01	657.47
	30	1454	" " " " " "	192.80	182.91
191	34	1455	" " " " " "	399.41	378.93
1282	21	1456	" " " " " "	1,285.31	1,219.40
1304	1	1458	" " " " " "	1,301.38	1,234.65
1303	1	1459	" " " " " "	1,301.38	1,234.65
1302	1	1460	N. Y. State Rlty. & Term. Co.	1,301.38	1,234.65
1301	1	1461	" " " " " " "	417.73	396.31
	6	1462	" " " " " " "	883.65	838.34
1304	20	1463	Bible Teachers Tr. School	82.32	78.10
	54	1464	City of New York	68.96	65.42
	22	1465	Bible Teachers Tr. School	30.11	28.57
	52	1466	" " " "	33.73	32.00
	51	1467	" " " "	28.98	27.49
	23	1468	" " " "	30.11	28.57
	50	1469	" " " "	28.98	27.49
	49	1470	" " " "	32.13	30.48
	23½	1471	Jas. Nugent Est.	30.11	28.57
192	24	1472	Bible Teachers Tr. School	30.11	28.57
	25	1473	G. A. Stryker	30.11	28.57
	47	1474	Swedish Evang. Beth.	64.26	60.96
	46½	1475	St. Patrick's Cathedral	32.13	30.48
	46	1475A	" " "	32.13	30.48
	26	1476	F. Johnson Roe	90.93	86.27
	45	1477	Jas. Kyle Est.	32.13	30.48
	28	1478	T. B. Gloster	29.55	28.03
	29	1479	J. L. McGovern	32.13	30.48
	44	1480	R. L. Hayer Est.	40.16	38.10
	43	1481	M. Lyons	44.18	41.91
	30	1482	J. L. McGovern	32.13	30.48
	30½	1483	" " "	32.13	30.48
	42	1484	F. W. Mosher	32.13	30.48
	31	1485	G. E. Stuckey	32.13	30.48
	32	1486	L. L. Cassidy	32.13	30.48
	41	1487	H. K. Newton	44.18	41.91

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	33½	1488	L. L. Cassidy	32.13	30.48	
	40	1489	W. H. Redman Est.	32.66	30.99	
	39	1489A	A. J. Gilman	32.00	30.36	
	38½	1490	P. A. H. Jackson Est.	32.00	30.36	
	38	1490A	Jos. Ernst	32.00	30.36	
	37	1491	M. A. Cate Est.	32.00	30.36	
	33	1491A	L. Hellinger	128.51	121.92	
1303	20	1492	P. McKeogh	22.40	21.25	
	21	1492A	Shelton Holding Corp.	22.85	21.68	
	22	1493	Kulze Bros.	22.40	21.25	
	25	1493A	M. Kramer	17.81	16.90	
	26	1494	" "	47.25	44.83	
	27	1494A	A. S. Finch	40.16	38.10	
	28	1495	C. Protzman	40.16	38.10	
	29	1495A	M. Kramer	40.16	38.10	
	30	1496	A. M. Pinckney	40.16	38.10	194
	31	1496A	Mary Lyons	40.16	38.10	
	32	1497	H. W. Charles	40.16	38.10	
	32½	1497A	Cassidy Rlty. Corp.	30.53	28.96	
	33	1498	Sarah J. Lynch	30.50	28.94	
	34	1498A	N. P. B. Hance	22.90	21.73	
	34½	1499	G. Putzel	22.90	21.73	
	35	1499A	C. Cahn	22.90	21.73	
	36	1500	D. A. Williams	22.90	21.73	
	37	1500A	A. Falikee	32.00	30.36	
	38	1501	" "	32.67	30.99	
	38½	1501A	D. A. Williams	19.58	18.58	
	39	1502	D. L. Durra	18.82	17.85	
	40	1502A	E. C. Carroll	19.20	18.22	
	40½	1503	Wm. Holiner	19.20	18.22	
	40¼	1503A	Clara Frank	19.20	18.22	
	41	1504	Boston Holding Corp.	40.16	38.10	195
	42	1504A	" " "	40.16	38.10	
	43	1505	" " "	40.16	38.10	
	45	1505A	M. B. Birnstein	80.32	76.20	
	46	1506	A. W. Hilyard	36.94	35.05	
	47	1506A	" " "	43.38	41.16	
	53	1507	Shelton Hldg. Corp.	381.15	361.60	
1302	21	1508	S. Simonson	35.62	33.79	
	21½	1508A	" "	28.37	26.92	
	22	1509	C. F. Pond	21.76	20.64	
	23	1509A	S. P. Rogensburg	21.76	20.64	
	23½	1510	G. A. Lavelle	20.48	19.43	
	24	1510A	J. Michel	32.13	30.48	
	25	1511	E. H. Haas	32.13	30.48	
	25½	1511A	T. J. Lynch	28.11	26.67	

	27	1512A		26.78	25.41
	26	1512	T. J. Lynch	28.11	26.67
	27½	1513	G. W. Bogart	26.78	25.41
	28	1513A	C. J. Gallagher	26.78	25.41
	29	1514	A. Sheridan	26.78	25.41
	29½	1514A	R. Deeves & Son	26.78	25.41
	30	1515	Wm. H. Tyler	26.78	25.41
	31	1515A	A. B. Oppenheimer	28.11	26.67
	31½	1516	" " "	28.11	26.67
	32	1516A	" " "	28.11	26.67
	32½	1517	" " "	28.11	26.67
	33	1517A	" " "	30.48	28.92
	34	1518	" " "	30.00	28.46
	35	1518A	" " "	30.00	28.46
197	36	1519	" " "	30.00	28.46
	37	1519A	" " "	30.00	28.46
	38	1520	" " "	30.00	28.46
	39	1520A	" " "	30.00	28.46
	40	1521	" " "	30.48	28.92
	41	1521A	" " "	28.11	26.67
	41½	1522	" " "	28.11	26.67
	42	1522A	" " "	28.11	26.67
	42½	1523	" " "	28.11	26.67
	43	1523A	Geo. G. Kip	32.13	30.48
	44	1524	" " "	32.13	30.48
	45	1524A	" " "	32.13	30.48
	45½	1525	" " "	32.13	30.48
	46	1525A	" " "	32.93	31.24
	47	1526	L. Landberg	52.37	49.68
	48	1526A	Wm. Wetstein	57.82	54.85
198	49	1527	Jos. L. Buttenweiser	57.82	54.85
	50	1527A	" " "	57.82	54.85
	51	1528	" " "	54.62	51.82
	20	1528A	S. Simonson	32.66	30.99
1301	50	1529	F. T. Hopkins	27.74	26.32
	51	1529A	E. A. Murtagh	27.20	25.81
	51½	1530	A. T. Civill	27.20	25.81
	52	1531	Ferdinand T. Hopkins	27.20	25.81
	53	1532	" " "	27.20	25.81
	23	1533	E. & R. Rlty. Co.	64.26	60.96
	21	1534	Pennsylvania Cement Co.	32.13	30.48
	20	1535	Jane E. Barney	32.13	30.48
	20½	1536	R. A. Van Wyck	32.13	30.48
	24	1537	S. S. Conert	32.13	30.48
	25	1538	J. Gladke	26.78	25.41
	25½	1539	J. F. Whelen	26.78	25.41

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26	1540	M. Downey	26.78	25.41
27	1541	" "	26.78	25.41
27½	1542	M. Hammond	26.78	25.41
28	1543	M. L. Livingston	26.78	25.41
29	1544	C. L. Gouvand	26.78	25.41
29½	1545	E. Coffin	26.78	25.41
30	1546	Margt. Ochs	26.78	25.41
31	1547	P. T. Kammerer	26.78	25.41
31½	1548	F. J. Digan	26.78	25.41
32	1549	H. D. Ryan	26.78	25.41
49½	1550	Jno. G. Nugent	32.13	30.48
49	1551	J. J. Nugent	32.13	30.48
48	1552	Abr. Poole	32.13	30.48
47	1553	A. Elliot	32.13	30.48
46½	1554	R. Lorenz	28.91	27.43
46	1555	H. Granberry	28.91	27.43
45	1556	A. Pferrmann	28.91	27.43
45½	1557	J. F. Maxwell	28.91	27.43
44	1558	J. S. Barclay	27.31	25.91
43	1559	L. Williams	27.31	25.91
42½	1560	J. S. Corning	27.31	25.91
42	1561	" " "	27.31	25.91
41	1562	M. Betjeman	32.13	30.48
40½	1563	" "	30.53	28.96
40¼	1564	" "	30.53	28.96
40	1565	" "	23.17	21.98
39	1566	" "	22.80	21.63
38	1567	" "	22.80	21.63
37	1568	" "	22.80	21.63
36	1569	W. McKim	40.00	37.95
35	1570	" "	40.00	37.95
34	1571	" "	40.00	37.95
33	1572	" "	40.66	38.57
47	1573	N. Edgar	19.20	18.22
48	1574	T. Hoffman	19.20	18.22
48½	1575	R. H. Lathin Est.	19.20	18.22
49	1576	Robt. Main	30.24	28.69
50	1577	A. Morrell	30.24	28.69
3	1578	" "	60.48	57.38
1	1579	M. Cassidy	92.74	87.98
46½	1580	F. W. Mosher	14.40	13.66
46¼	1581	" " "	14.40	13.66
46	1582	R. Goelet Est.	19.44	18.44
45	1583	H. Rosenblatt	24.00	22.77
7	1584	G. A. Haggerty	103.82	98.50
44	1585	J. W. Beekman Est.	20.40	19.35
8	1586	E. Hennessy	128.96	122.35

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43½	1587	J. W. Beekman Est.	19.58	18.58
43	1588	" " " "	19.73	18.72
42	1589	E. Nelson	20.27	19.23
41½	1590	M. Gleason	20.82	19.75
41	1591	D. Collins	21.36	20.26
40½	1592	H. Eichtersheimer	21.90	20.78
40	1593	J. Grogan	22.45	21.30
39	1594	S. Simonson	37.02	35.12
38	1595	" "	38.48	36.51
36	1596	" "	80.24	76.13
35	1597	L. Corlin	33.41	31.70
34	1598	B. Casagrande	73.36	69.60
32	1599	R. Isaacs	60.24	57.15
30	1600	M. Jacoby	80.32	76.20
203 29¼	1601	A. Knsepke	32.13	30.48
9	1602	E. Hennessy	21.84	20.72
9½	1603	Swedish Lutheran Church of Gustavis Adolphus	23.09	21.91
10	1604	E. M. Devin	21.84	20.72
11	1605	S. E. Davenport	23.09	21.91
12	1606	E. Hennessy	21.84	20.72
12½	1607	Q. Kremer	30.67	29.10
13	1608	S. Baker	29.92	28.39
14	1609	Edw. Story	29.17	27.67
15	1610	J. Hogan	28.91	27.43
15½	1611	Bible Teachers Training School	28.91	27.43
16	1612	" " " "	28.91	27.43
17	1613	" " " "	28.91	27.43
18	1614	" " " "	28.91	27.43
18½	1615	M. Cosgrove	28.91	27.43
204 19	1616	Cassidy Rlty. Co.	28.91	27.43
20	1617	" " "	28.91	27.43
20½	1618	S. McGleenan	28.91	27.43
21	1619	J. A. Murphy	28.91	27.43
21½	1620	Cath. Hayes	28.91	27.43
22A	1621	R. Apple Est.	16.40	15.56
29½	1622	" " "	14.18	13.45
29	1623	A. Knoepke	22.08	20.95
28½	1624	" "	20.59	19.53
28	1625	F. Schein	27.26	25.86
27	1626	C. Lent	27.26	25.86
26	1627	Gun Gross	27.26	25.86
25	1628	R. Topper	27.26	25.86
24	1629	E. Lentz Est.	27.26	25.86
23	1630	A. Solomon	14.29	13.56
22½	1631	Abr. Salamon	14.29	13.56
22	1632	" "	19.04	18.06

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1322	46	1633	Jos. Adrian	40.00	37.95	205
	47	1634	E. H. Nordlinger	59.20	56.16	
	48	1635	R. Relsei Son	62.40	59.20	
	4	1636	E. A. Cruikshank	39.06	37.06	
	3	1637	E. Ackerman	40.00	37.95	
	2	1638	A. Morrell	40.00	37.95	
	1	1639	F. W. Mosher	40.66	38.57	
	5	1640	G. Kahn	44.02	41.76	
	45	1641	J. Herman	28.94	27.46	
	6	1642	G. Kahn	45.52	43.19	
	44	1643	A. Gorman	24.80	23.53	
	7	1644	T. Murphy	27.50	26.09	
	43½	1645	M. M. Patrick	31.41	29.80	
	7½	1646	E. Cahill	26.69	25.32	
	43	1647	F. Duffy	32.13	30.48	
	8	1648	A. C. Crumy	26.69	25.32	206
	42	1649	M. Larney	33.73	32.00	
	9	1650	F. M. London	26.69	25.32	
	41½	1651	Sam'l. Harris	33.73	32.00	
	9½	1652	D. Boardman	20.40	19.35	
	10	1653	Lillian Fox	20.40	19.35	
	41	1654	Church of St. Boniface	33.73	32.00	
	11	1655	E. Hirsch	32.13	30.48	
	40	1656	R. Guntzer	33.73	32.00	
	12	1657	R. B. Burton Est.	22.18	21.04	
	39	1658	Maybelle Titus	33.73	32.00	
	12½	1659	W. R. Hobson	22.18	21.04	
	13	1660	Turtle Bay Holding Co.	40.16	38.10	
	37	1661	" " " "	61.04	57.91	
	14	1662	" " " "	32.13	30.48	
	36½	1663	" " " "	30.53	28.96	207
	15	1664	Herbert Parsons	32.13	30.48	
	36	1665	Turtle Bay Holding Co.	30.53	28.96	
	15½	1666	M. Churchill	32.13	30.48	
	35	1667	F. Little	30.53	28.96	
	16	1668	M. Poole	32.13	30.48	
	34	1669	M. Chapin	30.53	28.96	
	17	1670	M. Potter	32.13	30.48	
	33½	1671	F. C. Farley	30.53	28.96	
	18	1672	H. D. Roeder Inc.	32.13	30.48	
	33	1673	J. Kennedy	30.53	28.96	
	19	1674	Turtle Bay Holding Co.	32.13	30.48	
	32½	1675	J. Rublee	30.53	28.96	
	19½	1676	M. Haskins	32.13	30.48	
	32	1677	M. Smith	30.53	28.96	
	20	1678	H. Lefferts	32.13	30.48	

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		31	1679	T. T. Hopper	30.53	28.96
		21	1680	E. Cushing	32.13	30.48
		30	1681	St. Patricks Cathedral	30.53	28.96
		21½	1682	W. R. de Wattville	32.13	30.48
		29½	1683	E. J. Paulers	30.53	28.96
		22	1684	J. Ankel	22.53	21.37
		22½	1685	M. Carroll	22.53	21.37
		24	1686	R. Mignola	45.06	42.75
		29	1687	M. Kinsella	21.41	20.31
		28¾	1688	M. Bowsky	21.60	20.49
		28½	1689	M. Schmid	22.30	21.16
		28	1690	J. Hirsch	22.53	21.37
		27	1691	B. Epstein	24.96	23.68
		26	1692	L. Brunner	25.28	23.98
		25	1693	" "	25.60	24.29
209	1321	47	1694	R. Goelet	27.33	25.93
		48	1695	" "	25.70	24.38
		49	1696	" "	25.70	24.38
		50	1697	" "	33.44	31.73
		50½	1698	" "	33.44	31.73
		4	1699	" "	33.44	31.73
		3	1700	" "	25.70	24.38
		2	1701	" "	25.70	24.38
		1	1702	" "	27.33	25.93
		4½	1703	" "	23.73	22.51
		46½	1704	" "	23.73	22.51
		46	1705	P. Alvert Est.	30.53	28.96
		45½	1706	" " "	32.13	30.48
		45	1707	R. Goelet Est.	32.13	30.48
		44	1708	" " "	32.13	30.48
210		43	1709	" " "	32.13	30.48
		42	1710	" " "	32.13	30.48
		41	1711	" " "	32.13	30.48
		5	1712	" " "	197.58	187.45
		10	1713	J. S. Murphy	25.31	24.01
		11	1714	M. Levin	40.16	38.10
		40½	1715	P. Moloney	20.88	19.81
		40	1716	E. Bauer	20.88	19.81
		39	1717	M. Hornidge	29.98	28.44
		12	1718	E. Mangel	40.16	38.10
		13	1719	Wm. Schwind	40.16	38.10
		38	1720	S. Rosenbaum	29.98	28.44
		37½	1721	L. Micolino	29.98	28.44
		37	1722	N. McCarthy	29.98	28.44
		36	1723	H. Conolly	29.98	28.44
		14	1724	P. Walsh Est.	16.10	15.27
		14½	1725	" " "	16.10	15.27

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15	1726	B. Brettler	31.01	29.42
35	1727	M. Blodgetts	29.98	28.44
16	1728	E. T. Curry	27.20	25.81
34½	1729	M. Craigmile	29.98	28.44
17	1730	Flintlock Rlty. Co.	164.61	156.17
34	1731	M. deBeanjean	29.98	28.44
33	1732	J. Peet	29.98	28.44
32	1733	E. Cooper	29.98	28.44
31½	1734	L. Hirschfield	29.98	28.44
31	1735	L. Dickson	29.98	28.44
30	1736	G. Tighe	29.98	28.44
29½	1737	F. Hoadley	29.98	28.44
29¼	1738	H. Drebes	30.80	29.22
29	1739	T. Tobin	23.90	22.67
28	1740	E. McMahon	21.87	20.75
27	1741	N. Rosenthal	22.43	21.28
26½	1742	A. Mauer	21.78	20.66
26	1743	S. J. Weinberg	21.78	20.66
25	1744	Flintlock Rlty. Co.	159.60	151.42
23	1745	" " "	37.54	35.61
22	1746	" " "	30.48	28.92
1320 46	1747	N. Breslin Est.	38.61	36.63
47	1748	N. J. Jennings	38.00	36.05
48	1749	N. F. Mott	38.00	36.05
49	1750	S. O'Rielly	38.00	36.05
4	1751	R. Herlesman	38.00	36.05
3	1752	C. Phelps	38.00	36.05
2	1753	R. Swenkin	30.00	28.46
1	1754	T. J. McFarland Est.	30.48	28.92
4½	1755	K. Schnepp	16.13	15.30
5	1756	E. Held Est.	32.13	30.48
45	1757	M. Mahr	48.19	45.72
44	1758	J. Spannhahe	32.13	30.48
7	1759	P. Wright	283.46	268.92
43	1760	J. Michels Est.	53.81	51.05
11	1761	P. McGuire	24.10	22.86
40	1762	S. Roome	28.91	27.43
12	1763	M. Mitchell	41.76	39.62
39	1764	S. Roome	43.38	41.16
13	1765	M. Mitchell	41.76	39.62
38	1766	W. J. Wuest	30.53	28.96
14	1767	P. Bentz	41.76	39.62
37½	1768	W. J. Wuest	30.53	28.96
15	1769	M. Markowitz	41.76	39.62
37	1770	P. Curry Est.	40.16	38.10
36	1771	V. Messines	40.16	38.10

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	16	1772	S. Grabenheimer	41.76	39.6
	35	1773	M. Anacher	40.16	38.1
	17	1774	Donelly & Ricci Est.	41.76	39.6
	18	1775	" "	41.76	39.6
	34	1776	M. Mindermann	40.16	38.1
	33	1777	232 E. 47th St. Corp.	36.94	35.0
	19	1778	Coca-Cola Bottling Co. of N. Y.	41.76	39.62
	32	1779	I. Geringer	36.94	35.05
	20	1780	Coca-Cola Bottling Co. of N. Y.	40.16	38.10
	31	1781	A. O'Connell	36.94	35.05
	21	1782	Coco-Cola Bottling Co.	43.38	41.16
	30	1783	I. Geringer	36.94	35.05
	29½	1784	M. Eidt	32.58	30.91
	21½	1785	Coca-Cola Bottling Co.	32.58	30.91
215	29	1786	J. W. Eidt	29.20	27.70
	28	1787	A. Roland Est.	29.20	27.70
	27	1788	J. Eidt	29.20	27.70
	26	1789	Marne Rlty. Co.	40.00	37.95
	25	1790	Chas. Loeffer	40.00	37.95
	24	1791	J. Eidt	29.66	28.14
	23	1792	M. Manafino	29.20	27.70
	22	1793	Davey Rlty. Co.	29.20	27.70
1281	69	1794	Q. Byrnes	45.76	43.41
	70	1795	J. J. Hall Est.	45.00	42.69
	71	1796	Robt. Eble	54.00	51.23
	72	1797	A. Lamont Est.	54.00	51.23
	4	1798	Q. S. J. Realty Co.	30.29	28.74
	3	1799	Church of Heavenly Rest	218.48	207.28
	2	1800	T. T. Echert, Jr.	36.35	34.49
	1	1801	G. B. Thayer	87.75	83.26
216	6	1802	Church of Heavenly Rest	56.85	53.93
	68	1803	Shops, Inc.	54.23	51.45
	66	1804	Chas. A. Coe Est.	54.23	51.45
	7	1805	J. V. O. McKune	72.29	68.58
	65	1806	M. E. Pinchot Est.	73.49	69.72
	8	1807	Lefferts Strobeigh	72.29	68.58
	64	1808	J. E. Van Brunt	43.97	41.72
	9	1809	G. Kremer	72.29	68.58
	10	1810	45th & 46th St. Corp.	216.86	205.74
	62	1810A	Lawyers Rlty. Co.	90.36	85.73
	61	1811	E. Lehmann Est.	45.18	42.86
	13	1812	45th & 46th St. Corp.	57.83	54.86
	60	1813	R. W. Goelet	36.14	34.29
	17	1814	H. Phipps Est. Corp.	298.19	282.90
	59	1815	Anna S. Pedersen	72.29	68.58
	56	1816	H. Phipps Est. Corp.	119.28	113.16

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1279	69	1817	M. Byrnes Est.	416.09	394.75	217
	72	1818	S. M. Rothschild	135.00	128.08	
	4	1819	Delco Realty Corp.	135.00	128.08	
	1	1820	" " "	555.72	527.22	
	6	1821	3 & 5 E. 44th St., Inc.	136.64	129.63	
	66	1822	" "	72.29	68.58	
	7	1823	" "	136.64	129.63	
	9	1824	Farmers Loan & Trust Co.	136.64	129.63	
	65	1825	J. M. Schiefflin Est.	72.29	68.58	
	64	1826	A. S. Vernay	72.29	68.58	
	10	1827	Farmers Loan & Trust Co.	136.64	129.63	
	63	1828	A. S. Vernay	57.83	54.86	
	11	1829	Farmers Loan & Trust Co.	136.64	129.63	
	59	1830	Borden Rlty. Corp.	352.40	334.33	
	12	1831	S. P. Colt	84.32	80.00	
	17	1832	Riverbrook Rlty. Co.	608.38	577.18	218
	58	1833	Oceanic Investing Co.	73.29	69.53	
	57	1834	" " "	116.75	110.76	
	17½	1835	P. A. H. Jackson Est.	94.05	89.23	
	48	1836	Anahma Rlty. Corp.	580.53	550.76	
	45	1837	N. Y. Central R. R. Co.	354.91	336.71	
	23	1838	Schmitt Rlty. Corp.	270.00	256.15	
	28	1839	N. Y. Central R. R. Co.	464.27	440.46	
	24	1840	C. A. Dards	137.27	130.23	
	25	1841	" " "	126.00	119.54	
1278	69	1842	Highbrighton Rlty. Co.	401.58	380.99	
	67	1843	Wetzel Bldg. Co.	217.27	206.13	
	65	1844	Pneumatic Tool Rlty. Corp.	253.06	240.08	
	64	1845	Henry Phipps Est. Corp.	126.53	120.04	
	63	1846	A. B. Ashforth Inc.	126.53	120.04	
	62	1847	C. B. Stone	126.53	120.04	
	72	1848	523 Fifth Ave. Rlty. Corp.	209.56	198.81	219
	1	1849	Temple Emanuel	1,408.82	1,336.58	
	8	1850	Henry Phipps Est. Corp.	409.61	388.61	
	14	1851	Madison Ave. Officers Inc.	1,807.67	1,714.97	
	17	1852	Pease & Elliman	171.00	162.23	
	15	1853	Sarah A. Fays	188.10	178.45	
	20	1854	N. Y. C. & H. R. R. Co.	2,950.35	2,799.06	
1277	69	1855	Postal Life Ins. Co.	640.13	607.30	
	72	1856	S. M. Sturges	415.13	393.84	
	68½	1857	Postal Life Ins. Co.	27.43	26.02	
	68	1858	Oceanic Inv. Co.	72.29	68.58	
	67	1859	" " "	117.72	111.68	
	67½	1859A	" " "	63.00	59.77	
	66	1860	J. Millbank	419.26	397.76	
	64	1861	Duncan Phyle Est.	122.83	116.53	

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	63	1862	Henry Phipps Est.	158.98	150.83
	52	1865	John C. Clark	225.00	213.46
	51	1866	" " "	187.47	177.86
	50	1867	E. S. Charles	187.47	177.86
	46	1868	" " "	239.76	227.47
1281	21	1869	N. Y. C. R. R. Co.	222.75	211.33
	24	1870	" " " " " "	1,737.00	1,647.93
1300	1	1871	" " " " " "	2,004.75	1,901.95
1280	90	1872	" " " " " "	2,689.20	2,551.30
	60	1873	" " " " " "	4,869.95	4,620.22
1300	50	1874	Gyges Rlty Co.	288.00	273.33
	20	1875	F. I. Helmuth Est.	109.08	103.49
	21	1876	C. A. Ferguson	45.68	43.34
	23	1877	C. P. McManus	85.56	81.17
221	23½	1878	C. Musgrave	31.93	30.29
	23¼	1879	" "	24.19	22.95
	24	1880	J. E. Barney	57.83	54.86
	24½	1881	L. J. Doyle	52.04	49.37
	25	1882	S. A. Clark	63.59	60.33
	47	1883	H. Goetting	32.53	30.86
	26	1884	145 E. 45th St. Corp.	57.83	54.86
	46½	1885	R. A. Williams	27.11	25.72
	27	1886	M. B. Coles	57.83	54.86
	46	1887	F. Schulz Co.	30.72	29.14
	45½	1888	E. A. Kassing	27.11	25.72
	27½	1889	E. Corning Co.	57.83	54.86
	45	1890	P. D. Parker	30.72	29.14
	28	1891	Wm. A. Blanch Est.	57.83	54.86
	44	1892	Rose Dunn	27.11	25.72
	29	1893	E. W. Van Vlech	57.83	54.86
222	43	1894	R. J. Rosenthal	30.72	29.14
	30	1895	McMillon Rlty. Corp.	57.83	54.86
	42	1896	P. T. Kammever	28.91	27.43
	31	1897	W. A. Delaney	57.83	54.86
	41	1898	P. Walblott	72.29	68.58
	32	1899	T. J. Edlich	57.83	54.86
	40	1899A	J. P. Gilford	45.72	43.38
	39	1900	T. B. Gilford	45.00	42.69
	38	1901	" " "	54.00	51.23
	37	1902	S. T. Gilford	54.00	51.23
	36	1903	" " "	67.50	64.04
	35	1904	J. P. Gilford	67.50	64.04
	34	1905	" " "	81.00	76.85
	33	1906	" " "	82.30	78.08
1299	51	1907	E. A. Hurry Est.	47.25	44.83
	51½	1908	Miami Minturn	47.25	44.83

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	52	1909	H. Bohmfalk	47.25	44.83
	52½	1910	T. Quinn	47.25	44.83
	48	1911	Y. W. C. A.	216.86	205.74
	53	1912	R. Rosenberg	49.90	47.34
	54	1913	C. A. Barry	50.63	48.03
	19	1914	C. W. Sanford	68.42	64.91
	19½	1915	James E. Tower	71.05	67.41
	20	1916	E. A. Hurry Est.	73.68	69.90
	21	1917	R. R. Co-operative Bldg. & Loan Assn.	76.31	72.40
	22	1918	I. F. Henderson	90.72	86.07
	23	1919	Oxinoco Rlty. Co.	506.02	480.07
	47	1920	Robt. Goelet Est.	57.83	54.86
	46½	1921	" " "	57.83	54.86
	27	1922	" " "	126.50	120.01
	46	1923	" " "	57.83	54.86
	28	1924	" " "	126.50	120.01
	45	1925	" " "	57.83	54.86
	29	1926	" " "	126.50	120.01
	44	1927	" " "	57.83	54.86
	42	1928	Childrens Aid Soc.	108.44	102.88
	30	1929	I. O. Walter	126.50	120.01
	31	1930	" " "	253.01	240.04
	41½	1931	G. J. Schoeffel	54.22	51.44
	41	1932	H. Schanzlin	54.22	51.44
	40	1933	G. Goetting Est.	85.16	80.79
	39	1934	W. Longman	91.57	86.87
	38	1935	M. Golfstein	96.18	91.25
	37	1936	M. V. Friend	102.60	97.34
	36	1937	F. Wohlfent	109.01	103.42
	35	1938	R. Wohlfent	115.43	109.51
	34	1939	L. Pascal	121.83	115.58
	33	1940	E. J. Murphy	128.25	121.67
1298	50	1941	P. J. Flannery	87.48	82.99
	51	1942	R. Hurry	77.92	73.92
	52	1943	C. A. Ferguson	75.48	71.61
	52¼	1944	Grace Edmonds	73.05	69.30
	52½	1945	M. S. Falh Inc.	70.61	66.99
	49½	1946	Neela Rlty. Co.	68.18	64.68
	49	1947	C. A. Holmes	101.20	96.01
	48	1948	E. E. Gibson	101.20	96.01
	47½	1949	Amsterdam Bldg. Co.	75.90	72.01
	47	1950	J. F. Boyle	75.90	72.01
	46½	1951	Wm. H. Flammer	75.90	72.01
	46	1952	R. W. Lehna	75.90	72.01
	53	1953	Nectar Rlty. Co.	262.08	248.64

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	20	1954	M. Currier	126.20	119.73
	21	1955	E. Toumey Est.	129.28	122.65
	22	1956	A. Z. A. Rlty. Corp.	132.35	125.56
	23	1957	" " " " "	158.95	150.80
	24	1958	" " " " "	253.01	240.04
	25	1959	B. Hughes Est.	120.46	114.28
	25½	1960	C. Conner	120.46	114.28
	26	1961	A. Malcolm	120.46	114.28
	27	1962	J. A. McAllister	144.58	137.17
	27½	1963	St. Agnes Church	144.58	137.17
	45	1964	" " "	126.50	120.01
	28	1965	" " "	759.02	720.10
	42	1966	" " "	452.37	429.17
	41	1967	P. C. Gallagher	121.01	114.80
227	40½	1968	E. P. McDonald	68.04	64.55
	40	1969	" " "	60.48	57.38
	39	1970	" " "	60.48	57.38
	38	1971	L. H. Lion	103.68	98.36
	37	1972	H. Herold Est.	108.86	103.28
	36½	1973	" " "	149.40	141.74
	36	1974	" " "	149.40	141.74
	34	1975	I. Cohen	384.03	364.34
	33	1976	E. T. Kennedy Shippan	198.79	188.60
1297	45	1978	Robt. M. Law	180.72	171.45
	43	1979	" " "	180.72	171.45
	41	1980	J. C. Clark	361.44	342.90
	40	1981	M. G. Wise	225.00	213.46
	39	1982	L. Boehn	225.00	213.46
	38	1983	H. Pols	225.00	213.46
	37	1984	" "	225.00	213.46
228 1319	47	1985	J. Dunhah Est.	36.00	34.15
	48	1986	A. A. Weigent	36.00	34.15
	49	1987	G. Tarantino	26.78	25.41
	49½	1988	" "	26.78	25.41
	50	1989	D. J. Emanuel	34.56	32.79
	4½	1990	I. Teschner	32.76	31.08
	4	1991	M. Frohman Est.	24.30	23.05
	3	1992	" " "	25.66	24.34
	2	1993	L. J. Carpenter	27.54	26.13
	1	1994	" " "	29.16	27.66
	5½	1995	" " "	45.96	43.60
	5¼	1996	M. Frohman Est.	57.83	54.86
	46½	1997	E. F. Lyon	36.14	34.29
	5	1998	F. E. Kuebele	54.22	51.44
	46	1999	L. Heymann	27.11	25.72
	6	2000	M. Teschendorff	54.22	51.44

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45½	2001	J. Anderson	27.11	25.72
6½	2002	E. J. Ramsey	54.22	51.44
45	2003	A. J. Dabour	27.56	26.15
7	2004	M. McGuire	54.22	51.44
44	2005	A. Perminger	27.56	26.15
8	2006	M. A. Norman	48.20	45.73
43	2007	Shelter for Resp. Girls	36.32	34.46
11	2008	Inst. of the Franciscan Mis. of Mary	240.95	228.59
40	2009	G. H. Masten Realty Co.	72.54	68.82
42½	2010	B. Giebel Est.	17.89	16.97
42	2011	E. G. Godfrey	17.77	16.86
41	2012	M. G. Cohen	17.89	16.97
40½	2013	M. Meade	17.77	16.86
39½	2014	G. H. Masten Rlty. Co.	30.27	28.72
12	2015	A. Schierenbech	72.29	68.58
13	2016	T. Bienz	72.29	68.58
39	2017	G. H. Masten Rlty. Co.	34.79	33.01
38	2018	Wm. D. Chapple	34.79	33.01
37	2019	C. S. Andrews Est.	34.79	33.01
14	2020	S. Goldman	67.77	64.29
15	2021	U. S. Trust Co.	67.77	64.29
36	2022	F. L. Hang	45.18	42.86
16	2023	Matons Rlty. Corp.	63.25	60.01
35	2024	E. Stephany	45.18	42.86
34	2025	L. Hellinger	45.18	42.86
17	2026	Matons Rlty. Corp.	63.25	60.01
33	2027	H. E. Morgan	67.77	64.29
18	2028	J. Fuchs	58.73	55.72
19	2029	E. F. Kesly	58.73	55.72
31	2030	K. E. Morgan	67.77	64.29
20	2031	R. Schwarz	54.22	51.44
30	2032	P. Schloiser	45.18	42.86
21	2033	L. Thurm	54.22	51.44
29½	2034	E. Koch	22.68	21.52
29	2035	M. E. Scanlon	34.29	32.53
28	2035A	Max Levy	33.75	32.02
27	2036	E. Koch	49.50	46.96
26	2037	M. L. Kern	49.50	46.96
25	2038	C. W. Eidt	54.00	51.23
24	2039	T. F. Baldwin	54.00	51.23
23	2040	C. Tarzian	58.50	55.50
22½	2041	H. Churzian	59.48	56.43
1318 48	2042	Jones Wood Rlty. Corp.	72.29	68.58
49	2043	T. J. Lynch	56.84	53.93
49½	2044	" " "	59.55	56.50

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232		50	2045	J. Schmid	62.26	59.07
		51	2046	" "	64.97	61.64
	1318	3	2047	Frank Fowler	150.35	142.64
		2	2048	J. E. Leaycroft	161.92	153.62
		1	2049	A. V. McLaughlin	86.83	82.38
		5	2050	M. H. Runk	126.50	120.02
		47	2051	E. A. Bogart	72.29	68.58
		6	2052	M. H. Runk	94.88	90.01
		46	2053	R. Niemann	72.29	68.58
		7	2054	M. H. Runk	94.88	90.01
		45	2055	A. Haase	72.29	68.58
		8	2056	O. F. Browning Est.	211.53	200.68
		44	2057	Wm. Barber	48.20	45.73
		43½	2058	F. Brockman	48.20	45.73
		43	2059	214 E. 45th Street Co.	48.20	45.73
233		9	2060	Etagboe Holding Co.	199.56	189.33
		42	2061	Patk. MacCauley	72.29	68.58
		41	2062	Chas. N. Eidt	72.29	68.58
		11	2063	F. W. Mosher	106.17	100.73
		40½	2064	Hetty Conway	36.14	34.29
		40	2065	" "	36.14	34.29
		39	2066	J. McGleenan	78.07	74.07
		12	2067	F. W. Mosher	99.40	84.30
		13	2068	" " "	99.40	94.30
		14	2069	Wm. Hoffman	99.40	94.30
		38	2070	D. Penella	70.47	66.86
		37	2071	C. Reinhardt	73.19	69.44
		36	2072	J. Chase	91.35	86.67
		15	2073	E. Baumgarten	185.24	175.74
		17	2074	Wm. Prosnitz	68.67	65.15
		35	2075	J. C. H. Huppel Brew. Co.	39.98	37.93
234		18	2076	Grassi Plastering Co.	134.41	127.52
		34	2077	Wm. F. Harnett	39.21	37.20
		33	2078	Z. T. Emerson	45.30	42.98
		19	2079	H. B. Twombley	91.54	86.85
		20	2080	Jacobson & Co.	80.87	76.72
		31	2081	H. Aronson	108.43	102.87
		21	2082	F. Lawery	55.46	52.62
		21½	2083	Jos. Sonntag	41.18	39.07
		22	2084	Childrens Aid Society	231.22	219.36
		30½	2085	C. W. Heimburg	27.22	25.82
		30	2086	E. A. Haaren	48.01	45.55
		29	2087	A. Hochster	47.25	44.83
		28	2088	C. Lutz Est.	64.13	60.84
		27	2089	A. Haase	65.88	62.50
		26	2090	Selvin Rlty. Co.	70.07	66.48

Final Decree (Abstract of Benefit).

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1317	45	2091	A. B. Robinson	94.01	89.19
	46	2092	Wm. H. Whiting	92.16	87.43
	46½	2093	A. H. Rewbel	103.68	98.36
	47	2094	" " "	103.68	98.36
	48	2095	" " "	115.20	109.29
	4	2096	I. C. Delaplaine	115.20	109.29
	3	2097	J. H. Henshaw	244.80	232.25
	2	2098	M. Haggerty	123.84	117.49
	1	2099	C. Steffins	126.72	120.22
	4½	2100	M. C. Devine Est.	180.72	171.45
	44½	2101	A. K. Reid	126.51	120.02
	44	2102	J. W. Clausen	126.51	120.02
	5	2103	Wm. J. Quinn	180.72	171.45
	43	2104	Marne Rlty. Co.	119.73	113.59
	6	2105	H. P. Wright	171.68	162.88
	42	2106	E. W. Daly	119.73	113.59
	7	2107	E. H. Schmid	171.68	162.88
	41	2108	H. Samson	112.95	107.16
	8	2109	E. G. Schmid	162.65	154.31
	40	2110	Marne Rlty. Co.	112.95	107.16
	9	2111	Am. Railway Express Co.	162.65	154.31
	37	2112	" " " "	311.74	295.75
	10	2113	" " " "	153.61	145.73
	11	2114	" " " "	770.32	730.82
	15	2115	Edw. C. Sommer	151.79	144.01
	30	2116	E. Baumgarten	437.89	415.44
	16	2117	J. C. Eidt	140.72	133.50
	17	2118	Wm. Roth	141.12	133.88
	19	2119	Commodore Rlty. Co.	234.97	222.92
	29	2120	R. P. Marshall	72.29	68.58
	20	2121	" " "	91.49	86.80
	28½	2122	E. M. R. Land Co.	49.93	47.37
	20½	2123	R. P. Marshall	86.74	82.29
	28	2124	E. Rosensrock Est.	55.44	52.60
	27½	2125	R. T. Tuthill	51.28	48.65
	27	2126	S. Howe	53.84	51.08
	26	2127	J. Klein	53.84	51.08
	25	2128	A. J. Dworsky	99.00	93.92
	24	2129	J. Schaefer	83.12	78.86
	23	2130	M. F. Angell	83.12	78.86
	22	2131	" " "	86.74	82.29
	21	2132	M. Silverman	86.74	82.29
16	47	2133	Wm. Delaney	146.88	139.35
	48	2134	C. Schniltzer	144.00	136.62
	48½	2135	E. Farrell	144.00	136.62
	49	2136	G. W. Pell Est.	144.00	136.62

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238 *Final Decree (Abstract of Benefit).*

50	2137	Geo. W. Pell Est.	144.00	136.62
46½	2138	J. J. Murphy	180.72	171.45
43	2139	M. A. Claffy	686.74	651.52
35	2141	M. Goetz	126.50	120.01
34	2142	Crescent Star Rlty. Co.	126.50	120.01
31	2143	A. Gerstendorfer	451.80	428.63
30	2144	M. O'Connell	81.32	77.15
29	2145	I. Wortman	81.32	77.15
28½	2146	M. Wortman	81.32	77.15
28	2147	Wm. Ursprung	81.32	77.15
27	2148	M. Yung Est.	81.32	77.15
		Total		$1,282,845.55

239 Dated, New York, April 4, 1927.

James O'Malley, Justice of the Supreme Court of the State o New York.

Dated, New York, February 28, 1928.

James O'Malley, Justice of the Supreme Court of the State o New York.

Benefit Maps Attached to Final Decree of Supreme Court.

240 (These maps are printed at page 1890 of the record)

[Final Decree of the Supreme Court in this matter was filed in the office of the Clerk of the County of New York on March 14, 1928]

Resolution of Board of Estimate and Apportionment Duly Adopted September 30, 1921, Directing Institution of Proceeding. 241

Board of Estimate and Apportionment City of New York (Cal. No. 3)

Whereas, The Public Service Commission for the First District by an order and determination adopted on April 22, 1921, has certified, pursuant to the provisions of chapter 788 of the Laws of 1917, as amended by chapter 611 of the Laws of 1919, that the tracks, structure, station and appurtenances of the Manhattan Railway Company 242 in East 42d Street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service, and constitute an impediment and obstruction to the public use of said street;

Resolved, That the Board of Estimate and Apportionment, in pursuance of the provisions of the special act hereinbefore referred to and the Greater New York Charter, as amended, deems it necessary and advisable and for the public interest to condemn and remove said tracks, structure, station and appurtenances and also to con- 243 demn the rights, easements and franchises of the said Manhattan Railway Company to construct, maintain, operate or use said tracks, structure, station and appurtenances;

Resolved, That the compensation to be made to the said Manhattan Railway Company shall be ascertained and determined by the Supreme Court without a jury;

Resolved, That the Board of Estimate and Ap-

244 portionment hereby requests the Corporation Counsel to make application to a Special Term of the Supreme Court to have the compensation which should justly be made to the said Manhattan Railway Company ascertained and determined by the Supreme Court without a jury, and to have said Court assess the cost and expense of the proceedings upon the real property within the areas of assessment hereinafter determined and to take the necessary proceedings in the name of The City of New York to acquire title to the tracks,
245 structure, stations and appurtenances of the Manhattan Railway Company in East 42d Street, in the Borough of Manhattan, City of New York, and also to the rights, easements and franchises of said Manhattan Railway Company to construct, maintain and use said tracks, structure, stations and appurtenances.

Whereas, it appears from the affidavit of the Supervisor of the City Record that due notice was given therein that at the time of the adoption of the resolution directing the institution of proceedings herein, that the Board of Estimate and Apportionment would consider proposed areas of assessment and apportionment of cost as therein described, and would give a public hearing thereon upon the 30th day of September, 1921; and

Whereas, at the aforesaid time a public hearing was given to all persons interested in such proposed areas of assessment and apportionment of cost who appeared, and such proposed areas of assessment and apportionment of cost were duly considered by this Board;

Resolved, That no portion of the cost and expense of said proceedings, incurred by reason of

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the provisions of chapter 788 of the Laws of 1917, as amended by chapter 611 of the Laws of 1919, and of the Greater New York Charter, as amended, shall be borne and paid by The City of New York, but that the whole of such cost and expense including the expense of the Bureau of Street Openings, and all other expenses incurred in connection therewith shall be assessed as follows:

Zone A, which is to bear 75 per cent. of the entire cost of the proceeding, is bounded as follows:

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On the north by a line midway between East 42d street and East 43d street; on the east by the center line of 2d avenue; on the south by a line midway between East 41st street and East 42d street, and on the west by the center line of 5th avenue.

Zone B, which is to bear 25 per cent. of the entire cost of the proceeding, is bounded as follows:

On the north by the center line of East 50th Street; on the east by the center line of 2d avenue; on the south by the center line of East 34th street; and on the west by the center line of 5th avenue, excluding therefrom the territory within the boundary of Zone A.

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A true copy of resolution adopted by the Board of Estimate and Apportionment, September 30, 1921.

James Matthews, Assistant Secretary.

250 **Resolution of Board of Estimate and Apportionment Duly Adopted June 29, 1923, Amending Resolution Adopted September 30, 1921.**

Board of Estimate and Apportionment City of New York (Cal. No. 16)

Resolved, By the Board of Estimate and Apportionment, that the resolutions with regard to the elevated spur in East 42nd Street, adopted by the Board upon the 30th day of September, 1921, be and hereby are amended by preambles and resolutions as follows:

251 Whereas, The Public Service Commission for the First District, by an order and determination adopted on April 22, 1921, has certified, pursuant to the provisions of Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, that the tracks, structure, station and appurtenances of the Manhattan Railway Company in East 42nd Street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service, and constitute an impediment and obstruction to the public use of said street;

252 Resolved, That the Board of Estimate and Apportionment, in pursuance of the provisions of Chapter 788 of the Laws of 1917 as amended by Chapter 611 of the Laws of 1919, and as amended by Chapter 635 of the Laws of 1923, and the Greater New York Charter, as amended, deems it necessary and advisable and for the public interest to condemn and remove from that portion of East 42nd Street described as follows, to wit:

Beginning at the corner formed by the intersec-

tion of the southerly line of East Forty-second Street with the easterly line of Park Avenue, thence westerly along the westerly prolongation of the southerly line at East Forty-second Street, distance fifty feet; thence northerly at right angles to the line of East Forty-second Street, distance one hundred feet to a point in the northerly line of East Forty-second Street; thence easterly along the northerly line of East Forty-second Street, distance nine hundred and twenty-seven feet; thence southerly, at right angles to the line of East Forty-second Street, distance twenty-one feet; thence easterly and parallel with the line of East Forty-second Street, distance twenty-four feet; thence southerly at right angles to the line of East Forty-second Street, distance thirty-six feet; thence southerly and deflecting to the left thirty-seven degrees, thirty minutes, fifteen seconds, distance fifty-four and two-tenths feet, to a point in the southerly line of East Forty-second Street, as it is prolonged across Third Avenue; thence westerly along the said prolongation of the southerly line of East Forty-second Street, distance thirty-four feet to the corner formed by the intersection of the southerly line of East Forty-second Street, with the westerly line of Third Avenue; thence westerly, along the southerly line of East Forty-second Street, distance nine hundred feet to the point or place of beginning—such elevated railroad structure, tracks, stations, platforms, stairways and appurtenances now existing within and obstructing said part of said street constituting the existing Forty-second Street spur and also extinguishing all rights, easements and franchises of every nature whatsoever, except as hereinafter provided, whether owned by the Manhattan Railway Com-

pany or by whomsoever owned under which said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances were constructed and are maintained, and also to extinguish all rights, easements and franchises, by whomsoever owned, to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in said part of said street and to operate cars or trains of any kind whatsoever thereon or thereover upon making compensation to the owners or parties interested therein, but nothing in this resolution contained shall be deemed to extinguish or impair any existing franchise rights of the Manhattan Railway Company to construct and maintain a circuit breaker and such facilities including stairways in connection with and immediately adjacent to its Third Avenue station at Forty-second Street as the Transit Commission may determine to be necessary for the public convenience and necessity;

Resolved, That the compensation to be made to the said Manhattan Railway Company, or to whomsoever may be entitled thereto, shall be ascertained and determined by the Supreme Court without a jury;

Resolved, That the Board of Estimate and Apportionment hereby requests the Corporation Counsel to make application to a Special Term of the Supreme Court to have the compensation which should justly be made to the said Manhattan Railway Company, or to whomsoever may be entitled thereto ascertained and determined by the Supreme Court without a jury, and to have said Court assess the costs and expense of the proceedings, including any costs and expense heretofore

incurred by the City of New York, for procuring and making necessary rule and damage maps, or for any other purpose necessary and appertaining to said condemnation proceedings, upon the real property within the areas of assessment hereinafter determined and to take the necessary proceedings in the name of the City of New York to acquire title to the tracks, structure, station and appurtenances of the Manhattan Railway Company, or of whomsoever may have any title thereto, in that part of East 42nd Street, in the Borough of Manhattan, City of New York, hereinbefore described, and also to the rights, easements and franchises of said Manhattan Railway Company to construct, maintain and use said tracks, structure, station and appurtenances;

Whereas, It appears from the affidavit of the Supervisor of the City Record that due notice was given therein that at the time of the adoption of the resolution directing the institution of proceedings herein, that the Board of Estimate and Apportionment would consider proposed areas of assessment and apportionment of costs as therein described, and would give a public hearing thereon upon the 29th day of June, 1923; and

Whereas, At the aforesaid time a public hearing was given to all persons interested in such proposed areas of assessment and apportionment of cost who appeared, and such proposed areas of assessment and apportionment of costs were duly considered by this Board;

Resolved, That no portion of the cost and expense of said proceedings, incurred by reason of the provisions of Chapter 788 of the Laws of 1917,

262 as amended by Chapter 611 of the Laws of 1919, and as amended by Chapter 635 of the Laws of 1923, and of the Greater New York Charter, as amended, shall be borne and paid by the City of New York, but that the whole of such cost and expense, including the expense of the Bureau of Street Openings, and all other expenses incurred in connection therewith shall be assessed as follows;

Zone A, which is to bear 65 per cent. of the entire cost of the proceedings, is bounded as follows:

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On the north by a line midway between 42nd Street and 43rd Street; on the east by the centre line of Third Avenue; on the south by a line midway between East 41st Street and East 42nd Street; and on the west by the centre line of Park or Fourth Avenue.

Zone B, which is to bear 5 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East 42nd and East 43rd Street; on the east by the centre line of Second Avenue; on the south by a line midway between East 41st Street and East 42nd Street; and on the west by the centre line of Third Avenue.

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Zone C, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East 42nd Street and East 43rd Street; on the east by the centre line of Park or Fourth Avenue; on the south by a line midway between East 41st Street and East 42nd Street and on the west by the centre line of Fifth Avenue.

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Zone D, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows: On the north by the centre line of East 50th Street; on the east by the centre line of Second Avenue; on the south by the centre line of East 34th Street, and on the west by the centre line of Fifth Avenue, excluding therefrom the territory within the boundaries of the Zones A, B and C.

A True Copy of Resolution Adopted by the Board of Estimate and Apportionment, June 29, 1923.

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James Matthews, Assistant Secretary.

Resolution of Board of Estimate and Apportionment Duly Adopted November 23, 1923, Vesting Title.

Board of Estimate and Apportionment City of New York (Cal. No. 32)

Whereas, The Public Service Commission for the First District, by an order and determination adopted on April 22, 1921, has certified, pursuant to the provisions of chapter 788 of the Laws of 1917, as amended by chapter 611 of the laws of 1919, that the tracks, structure, station and appurtenances of the Manhattan Railway Company in East 42d street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service and constitute an impediment and obstruction to the public use of said street; and

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Whereas, The Board of Estimate and Apportionment, in pursuance of the provisions of said Chapter 788 of the Laws of 1917, as amended by chapter 611 of the Laws of 1919, and as amended

by chapter 635 of the Laws of 1923, and the Greater New York Charter, as amended, determined by resolutions duly adopted on June 29, 1923, that it was necessary and advisable and for the public interest to condemn and remove said tracks, structure, station and appurtenances, and also to condemn the rights, easements and franchises of the said Manhattan Railway Company to construct, maintain, operate or use said tracks, structure, station and appurtenances; and further provided that the compensation to be made to said Manhattan Railway Company or to whomsoever may be entitled thereto, shall be ascertained and determined by the Supreme Court without a jury; and that no portion of the cost and expense of said proceedings under said acts should be borne by The City of New York, but that all such cost and expense of said proceedings, including the expense of the Bureau of Street Openings and all other or different expenses incurred in connection therewith, shall be assessed upon the real property within the areas as follows:

Zone A, which is to bear 65 per cent of the entire cost of the proceedings is bounded as follows: On the north by a line midway between East 42d street and East 43d street, on the east by the centre line of 3d avenue, on the south by a line midway between East 41st street and East 42d street, and on the west by the centre line of Park or 4th avenue.

Zone B, which is to bear 5 per cent of the entire cost of the proceedings is bounded as follows: On the north by a line midway between East 42d street and East 43d street, on the east by the centre line of 2d avenue, on the south by a line midway be-

tween East 41st street and East 42d street, and on the west by the centre line of 3d avenue. 271

Zone C, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows: On the north by a line midway between East 42d street and East 43d street, on the east by the centre line of Park or 4th avenue, on the south by a line midway between East 41st street and East 42d street, and on the west by the centre line of 5th avenue.

Zone D, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows: On the north by the centre line of East 50th street, on the east by the centre line of 2d avenue, on the south by the centre line of East 34th street and on the west by the centre line of 5th avenue, excluding therefrom the territory within the boundaries of the Zones A, B and C. 272

Whereas, The Corporation Counsel, pursuant to the resolutions of said Board of Estimate and Apportionment, duly adopted on July 20, 1923, was requested to make application to a special term of the Supreme Court to have the compensation which should justly be made to the said Manhattan Railway Company, or to whomsoever may be entitled thereto, ascertained and determined by the Supreme Court without a jury, and to have said Court assess the costs and expense of the proceedings upon the real property within the aforesaid areas of assessment and to take the necessary proceedings in the name of The City of New York to acquire title to the tracks, structure, station and appurtenances of the Manhattan Railway Company in East 42d street, in the Borough of Manhattan, City of New York, and also to the rights, ease- 273

274 ments and franchises of said Manhattan Railway Company to construct, maintain and use said tracks, structure, station and appurtenances; and

Whereas, On the 18th day of July, 1923, an order granting the application of The City of New York to condemn the properties, rights, easements and franchises hereinbefore mentioned was entered in the Supreme Court of the State of New York, County of New York, Special Term, Part I; and

275 Whereas, The Board of Estimate and Apportionment deems it in the public interest that title to said rights, easements, franchises and property should be acquired by The City of New York prior to the entry of the final decree in the proceedings to acquire the same,

Resolved, That the Board of Estimate and Apportionment, in pursuance of the provisions of said special act as so amended and supplemented, and the provisions of the Greater New York Charter, as amended, including section 976 thereof, hereby directs, as authorized by said acts, that title

276 in fee to and the right to remove

"The elevated railroad structure, tracks, stations, platforms, stairways and appurtenances now existing within and obstructing said part of said street constituting the existing 42d street spur, described as follows, to wit:

"Beginning at the corner formed by the intersection of the southerly line of East 42d street with the easterly line of Park avenue, thence westerly along the westerly prolongation of the southerly line of East Forty-second street, distance fifty feet; thence northerly at right angles to the line of East 42d street, distance one hundred feet, to a point in

the northerly line of East 42d street; thence easterly along the northerly line of East 42d street, distance nine hundred and twenty-seven feet; thence southerly at right angles to the line of East 42d street, distance twenty-one feet; thence easterly and parallel with the line of East 42d street, distance twenty-four feet; thence southerly at right angles to the line of East forty-second street, distance thirty-six feet; thence southerly and deflecting to the left thirty-seven degrees thirty minutes fifteen seconds, distance fifty-four and two-tenths feet, to a point in the southerly line of East 42d street, as it is prolonged across 3d avenue, thence westerly along the said prolongation of the southerly line of East 42d street, distance thirty-four feet to the corner formed by the intersection of the southerly line of East 42d street with the westerly line of 3d avenue; thence westerly along the southerly line of East 42d street, distance nine hundred feet to the point or place of beginning,"—and all rights, easements and franchises of every nature whatsoever, except as hereinafter provided, whether owned by the Manhattan Railway Company or by whomsoever owned or controlled under which said elevated structure, tracks, stations, platforms, stairways and appurtenances were constructed and are maintained; also to all rights, easements and franchises, by whomsoever owned or controlled, to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in said part of said street and to operate cars or trains of any kind whatsoever thereon or thereover, except any existing franchise rights of the Manhattan Railway Company to construct and maintain a circuit breaker and such facilities, including stairways in

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280 connection with and immediately adjacent to its 3d Avenue Station at 42d street as the Transit Commission may determine to be necessary for the public convenience and necessity, in the Borough of Manhattan, the City of New York, shall vest in the City of New York on the 7th day of December, 1923.

Notice of Application of the City of New York for Order to Condemn.

New York Supreme Court, First Judicial District.

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In the Matter of the Application of The City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42d Street, constituting the existing 42d Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to con-

282 struct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

Notice is hereby given that an application will be made to the Supreme Court of the State of New York, First Judicial District, at a Special Term, Part I thereof, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, in the City of New York, on the 16th day of July, 1923, at the opening of the court on that day, or as soon thereafter as coun-

sel can be heard thereon, to have the compensation which should justly be made to the Manhattan Railway Company, or by whomsoever owned, for acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in East 42d street, constituting the existing 42d Street Spur, in the Borough of Manhattan, City of New York, and also for acquiring the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances ascertained and determined by the Supreme Court without a jury, and to have the cost of such improvement assessed by the said court, as hereinafter set forth in accordance with chapter 788 of the Laws of 1917, as amended by chapter 611 of the Laws of 1919, and as amended by chapter 635 of the Laws of 1923, and the Greater New York Charter as amended, and the resolutions of the Board of Estimate and Apportionment, adopted on the 30th day of September, 1921, and the 29th day of June, 1923.

The Board of Estimate and Apportionment, by resolution adopted on June 29, 1923, in pursuance of the provisions of chapter 788 of the Laws of 1917, as amended by chapter 611 of the Laws of 1919, and as amended by chapter 635 of the Laws of 1923, and the Greater New York Charter as amended, deems it necessary and advisable for the public interests to condemn and remove from that portion of East 42d street described as follows, to wit:

Beginning at the corner formed by the intersection of the southerly line of East 42d street with

286 the easterly line of Park avenue; thence westerly along the westerly prolongation of the southerly line at East 42d street, distance 50 feet; thence northerly at right angles to the line of East 42d street, distance 100 feet to a point in the northerly line of East 42d street; thence easterly along the northerly line of East 42d street, distance 927 feet; thence southerly at right angles to the line of East 42d street, distance 21 feet; thence easterly and parallel with the line of East 42d street, distance 24 feet; thence southerly at right angles to the line
287 of East 42d street, distance 36 feet; thence southerly and deflecting to the left 37 degrees 30 minutes 15 seconds, distance 54.2 feet to a point in the southerly line of East 42d street as it is prolonged across 3d avenue; thence westerly along the said prolongation of the southerly line of East 42d street, distance 34 feet, to the corner formed by the intersection of the southerly line of East 42d street with the westerly line of 3d avenue; thence westerly along the southerly line of East 42d street, distance 900 feet, to the point or place of beginning, such elevated railroad structure, tracks, stations,
288 platforms, stairways and appurtenances now existing within and obstructing said part of said street, constituting the existing 42d Street Spur, and also extinguishing all rights, easements and franchises of every nature whatsoever, except as hereinafter provided, whether owned by the Manhattan Railway Company or by whomsoever owned, under which said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances were constructed and are maintained, and also to extinguish all rights, easements and franchises, by whomsoever owned, to further maintain said elevated railroad structure, tracks, stations, plat-

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forms, stairways and appurtenances in said part of said street, and to operate cars or trains of any kind whatsoever thereon or thereover upon making compensation to the owners or parties interested therein; but nothing in this resolution contained shall be deemed to extinguish or impair any existing franchise rights of the Manhattan Railway Company to construct and maintain a circuit breaker and such facilities, including stairways in connection with and immediately adjacent to its 3d avenue station at 42d street as the Transit Commission may determine to be necessary for the public convenience and necessity.

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The Board of Estimate and Apportionment by a resolution adopted June 29, 1923, determined that no portion of the cost and expense of said proceedings, incurred by reason of the provisions of chapter 788 of the Laws of 1917, as amended by chapter 611 of the Laws of 1919, and as amended by chapter 635 of the Laws of 1923, and of the Greater New York Charter as amended, shall be borne and paid by The City of New York, but that the whole of such cost and expense, including the expenses of the Bureau of Street Openings, and all other expenses incurred in connection therewith shall be assessed as follows:

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Zone A, which is to bear 65 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between 42d street and 43d street; on the east by the centre line of 3d avenue; on the south by a line midway between East 41st street and East 42d street; and on the west by the centre line of Park or 4th avenue.

292 Zone B, which is to bear 5 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East 42d street and East 43d street; on the east by the centre line of 2d avenue; on the south by a line midway between East 41st street and East 42d street; and on the west by the centre line of 3d avenue.

Zone C, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East
293 42d street and East 43d street; on the east by the centre line of Park or 4th avenue; on the south by a line midway between East 41st street and East 42d street, and on the west by the centre line of 5th avenue.

Zone D, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by the centre line of East 50th street; on the east by the centre line of 2d avenue; on the south by the centre line of East 34th street; and on the west by the centre line of 5th avenue, excluding therefrom the territory within the
294 boundaries of the Zones A, B and C.

Dated, New York, July 2, 1923.

George P. Nicholson, Corporation Counsel, Municipal Building, Borough of Manhattan, City of New York.

Petition of The City of New York for Order to Condemn. 295

New York Supreme Court, First Judicial District.

In the Matter of the Application of The City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company; or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of 296
every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

To the Supreme Court of the State of New York, in and for the First Judicial District:

The application and petition of The City of New York respectfully shows to this Court, upon information and belief, as follows:

I. Chapter 788 of the Laws of 1917, provided in 297
Section 1 thereof as follows:

"The public service commission for the first district may, with the approval of the board of estimate and apportionment of the city of New York, authorize the removal by Manhattan Railway Company of the existing tracks, structure, station and appurtenances on its railroad on East Forty-second street, in the borough of Manhattan, in the city of New York, without prejudice to any franchise of said company to construct, maintain or operate the same, or the right or obligation of said com-

pany to restore the same in case such restoration shall be deemed to be necessary or convenient for the public service. The authorization may be given by a certificate granted by the said commission to the said Manhattan Railway Company with the approval of the said board of estimate and apportionment, and accepted by said Manhattan Railway Company, and said certificate shall include such terms and conditions as may be necessary or proper to accomplish said removal and restoration and to provide for the payment of the
399 expense thereof either by the company or by the city, or by apportionment of the same between the company and the city."

Negotiations with the Manhattan Railway Company by the Public Service Commission of the First District of the State of New York, with the approval of the Board of Estimate and Apportionment of The City of New York, pursuant to Chapter 788 of the Laws of 1917, resulted in the statement by that Company that its attitude in the matter is one of "complete opposition to removal of this spur."

300 II. Chapter 611 of the Laws of 1919, in Section 1 thereof, provided as follows:

"Chapter seven hundred and eighty-eight of the laws of nineteen hundred and seventeen, entitled 'An act to provide for the removal of the railroad structure of the Manhattan Railway Company on Forty-second street in the city of New York,' is hereby amended by inserting therein a new section to be section one-a, to read as follows:

§1-a. In the event that on or before the first day of October, nineteen hundred and nineteen no certificate shall have been made, approved and ac-

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cepted pursuant to the provisions of the foregoing section, and that no agreement can be reached with the Manhattan Railway Company as to the removal of said tracks, structure, station and appurtenances, the said public service commission on the presentation to it of a certified copy of a resolution of said board of estimate and apportionment containing a request therefor, shall institute a proceeding and conduct a hearing or hearings before said commission for the purpose of determining whether such existing tracks, structure, station and appurtenances are necessary and 302
convenient for the public service, or whether, even if necessary, and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of the street. Notice of such proceeding and of the original hearing to be held thereon shall be served upon the said Manhattan Railway Company not less than twenty days before the date fixed for such hearing and shall be published daily for at least fourteen days prior to the date of such hearing in two daily newspapers published in the borough of Manhattan, city of New York. Such hearing may be continued from time to time, but in 303
no event shall the proceeding or the hearings therein cover a period of more than thirty days from and after the date of the original hearing. If after such hearing or hearings the commission shall determine that such existing tracks, structure, station and appurtenances or any unit or portion thereof are no longer necessary and convenient to the public service, or even if necessary and convenient, that such tracks, structure, station and appurtenances or any unit or portion thereof constitute an impediment or obstruction to the public use of the street, the said commission with-

304 in thirty days after the date of the final hearing in such proceeding, shall make a certificate to that effect and cause a certified copy thereof to be filed in the office of the secretary of state. The commission shall also cause a certified copy of such certificate to be served upon said city and upon said Manhattan Railway Company. Upon the making of such certificate by said commission the said city shall have the right to condemn and remove from the street, such tracks, structure, station and appurtenances or such unit or portion
305 thereof as may have been determined by said commission to be no longer necessary and convenient to the public service or an impediment or obstruction to the public use of the street. Whenever the said board of estimate and apportionment determine it to be necessary or advisable to remove from the street such tracks, structure, station and appurtenances or such unit or portion thereof as shall have been determined by said commission, the said city shall also condemn the rights, easements and franchises of the said Manhattan Railway Company to construct, maintain, operate or use said tracks, structure, station and
306 appurtenances or any unit or portion thereof.

Such condemnation proceedings shall be instituted and prosecuted, and all costs, compensation and damages, for the payment of which the city shall become liable by reason of such condemnation proceeding and the funds necessary therefor shall be paid and obtained in accordance with the provisions of title four of chapter seventeen of the Greater New York charter, relative to the condemnation of real property for streets, parks, et cetera."

Under date of November 25, 1919, the President

of the Borough of Manhattan of The City of New York addressed a communication to the Board of Estimate and Apportionment of The City of New York, stating that the certificate provided for by Chapter 788 of the Laws of 1917 had not been made on or prior to October 1, 1919, as provided by Chapter 611 of the Laws of 1919, and that he recommend that the Board of Estimate and Apportionment adopt a resolution authorizing the President of the Borough of Manhattan to enter into negotiations with the Manhattan Railway Company for the removal of the elevated railroad structure of the Company within 42nd Street between Third Avenue and Park Avenue.

III. On December 5, 1919, the Board of Estimate and Apportionment of The City of New York duly adopted the following resolution:

"Resolved, That the President of the Borough of Manhattan be and he hereby is authorized to take up negotiations with the Manhattan Railway Company for the removal of the tracks, structure, station and appurtenances on 42d street between Third avenue and Park avenue, by agreement, in accordance with the provision of chapter 788 of the Laws of 1917, as amended and supplemented by chapter 611 of the Laws of 1919."

IV. Under date of November 12, 1920, the President of the Borough of Manhattan of The City of New York addressed a communication to the Board of Estimate and Apportionment of The City of New York, stating that in his opinion no agreement can be reached between The City of New York and the Manhattan Railway Company, such as provided for by Chapter 611 of the Laws of 1919, and recommended that the Board adopt a

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resolution requesting the Public Service Commission of the First District of the State of New York to take such action in regard to the removal of the elevated railroad structure in 42nd Street between Third Avenue and Park Avenue, as provided for by Chapter 611 of the Laws of 1919.

V. On January 14, 1921, the Board of Estimate and Apportionment of The City of New York duly adopted the following resolution:

"Whereas, Chapter 788 of the Laws of 1917 pro-
311 vides for the removal by the Manhattan Railway Company of its tracks, structure, station and appurtenances existing in East 42d street, Borough of Manhattan, upon the authority of the Public Service Commission for the First District, evidenced by a certificate to be granted by said Commission to be approved by the Board of Estimate and Apportionment and to be accepted by the said company; and

Whereas, Said Act was amended and supplemented by chapter 611 of the Laws of 1919, which provides that if a certificate shall not have been
312 made, approved and accepted, pursuant to the above provision, on or before October 1, 1919, for the removal of such tracks, structure, station and appurtenances and if no agreement can be reached with the Manhattan Railway Company for such removal, the Public Service Commission for the First District, upon the presentation to it of a certified copy of a resolution adopted by the Board of Estimate and Apportionment containing a request therefor, shall institute a proceeding and conduct a hearing or hearings for the purpose of determining whether such existing tracks, structure, station and appurtenances are necessary and

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convenient for the public service or whether, even if necessary and convenient, such tracks, structure, station and appurtenances or any unit or portion thereof constitute an impediment or obstruction to the use of the street; and

Whereas, No certificate authorizing the removal of such tracks, structure, station, or appurtenances was made, approved and accepted on or before October 1, 1919; and

Whereas, On December 5, 1919, this Board adopted a resolution authorizing the President of 314
the Borough of Manhattan to negotiate with said Manhattan Railway Company for the purpose of arriving at an agreement, pursuant to which the removal of the tracks, structure, station and appurtenances could be accomplished as contemplated by the provisions of law above referred to; and

Whereas, Said President of the Borough of Manhattan presented a report to this Board on November 26, 1920, setting forth that he had opened and carried on negotiations with the Manhattan Railway Company, through its President, Mr. Alfred 315
Skitt, and its counsel, Mr. Nichols, pursuant to the resolution of December 5, 1920, but that no agreement had been reached and that, in his opinion, no agreement can be reached with the said company for the removal of its tracks, structure, station and appurtenances; now, therefore, be it

Resolved, That the Public Service Commission for the First District be and it is hereby requested to institute a proceeding and conduct a hearing or hearings pursuant to the provisions of chapter 788, Laws of 1917, as amended by said chapter 611 of

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the Laws of 1919, for the purpose of determining the questions and matters set forth and specified in said acts."

VI. Pursuant to the aforesaid resolution adopted by the Board of Estimate and Apportionment on January 14, 1921, the Public Service Commission for the First District of the State of New York instituted a proceeding and conducted hearings for the purpose of determining whether the tracks, structure, station and appurtenances of the Manhattan Railway Company in East 42nd Street,
317 between Third Avenue and Park Avenue, in The City of New York, are necessary and convenient for the public service or whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of the street. Said proceeding so instituted was conducted in accordance with the provisions of Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, and on April 22, 1921, said Public Service Commission made an order and determination which reads in part as follows:

318 "The Public Service Commission for the First District does hereby order and determine.

1. That the tracks, structure, station and appurtenances of the Manhattan Railway Company in East 42nd Street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service and constitute an impediment and obstruction to the public use of said street."

A complete copy of said order and determination of the Public Service Commission is hereto

annexed, marked Schedule "A," and made a part hereof. 319

VII. On the 22nd day of April, 1921, the Public Service Commission for the First District of the State of New York issued the certificate provided for by Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, which certificate reads in part as follows:

"Now, Therefore, the Public Service Commission for the First District does hereby certify, pursuant to Chapter 788 of the Laws of 1917, as amended and supplemented by said Chapter 611 of the Laws of 1919, that the tracks, structure, station and appurtenances of the Manhattan Railway Company in East 42nd Street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service and constitute an impediment and obstruction to the public use of said street." 320

A complete copy of said certificate is hereto annexed, marked Schedule "B," and made a part hereof.

VIII. On April 23, 1921, a certified copy of said certificate of the Public Service Commission of the First District of the State of New York, annexed hereto and marked Schedule "B," was filed in the office of the Secretary of State of the State of New York. On April 25, 1921, a certified copy of said certificate of the Public Service Commission of the First District of the State of New York, hereto annexed and marked Schedule "B," was served on the Manhattan Railway Company. On April 25, 1921, a certified copy of said certificate of the Public Service Commission of the First District of the 321

State of New York, hereto annexed and marked Schedule "B," was served on the Corporation Counsel of The City of New York.

IX. On September 30, 1921, the Board of Estimate and Apportionment of The City of New York duly adopted a resolution reading as follows:

"Whereas, The Public Service Commission for the First District, by an order and determination adopted on April 22, 1921, has certified, pursuant to the provisions of chapter 788 of the Laws of
323 1917, as amended by chapter 611 of the Laws of 1919, that the tracks, structure, station and appurtenances of the Manhattan Railway Company in East 42d street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service, and constitute an impediment and obstruction to the public use of said street;

Resolved, That the Board of Estimate and Apportionment, in pursuance of the provisions of the special act hereinbefore referred to, and the Greater New York Charter, as amended, deems it
324 necessary and advisable and for the public interest to condemn and remove said tracks, structure, station and appurtenances and also to condemn the rights, easements and franchises of the said Manhattan Railway Company to construct, maintain, operate or use said tracks, structure, station and appurtenances;

Resolved, That the compensation to be made to the said Manhattan Railway Company shall be ascertained and determined by the Supreme Court without a jury;

Resolved, That the Board of Estimate and Ap-

portionment hereby requests the Corporation Counsel to make application to a Special Term of the Supreme Court to have the compensation which should justly be made to the Manhattan Railway Company ascertained and determined by the Supreme Court without a jury, and to have said Court assess the cost and expense of the proceedings upon the real property within the areas of assessment hereinafter determined and to take the necessary proceedings in the name of The City of New York to acquire title to the tracks, structure, stations and appurtenances of the Manhattan Railway Company in East 42d street, in the Borough of Manhattan, City of New York, and also to the rights, easements and franchises of said Manhattan Railway Company to construct, maintain and use said tracks, structure, stations and appurtenances.

Whereas, It appears from the affidavit of the Supervisor of the City Record that due notice was given therein that at the time of the adoption of the resolution directing the institution of proceedings herein, that the Board of Estimate and Apportionment would consider proposed areas of assessment and apportionment of cost as therein described, and would give a public hearing thereon upon the 30th day of September, 1921; and

Whereas, At the aforesaid time a public hearing was given to all persons interested in such proposed areas of assessment and apportionment of cost who appeared, and such proposed area of assessment and apportionment of cost were duly considered by this Board;

Resolved, That no portion of the cost and expense of said proceedings, incurred by reason of

328 the provisions of chapter 788 of the Laws of 1917, as amended by chapter 611 of the Laws of 1919, and of the Greater New York Charter, as amended, shall be borne and paid by The City of New York, but that the whole of such cost and expense, including the expense of the Bureau of Street Openings, and all other expenses incurred in connection therewith shall be assessed as follows:

Zone A, which is to bear 75 per cent. of the entire cost of the proceeding, is bounded as follows:

329 On the north by a line midway between East 42d street and East 43d street; on the east by the centre line of 2d avenue; on the south by a line midway between East 41st street and East 42d street, and on the west by the centre line of 5th avenue.

Zone B, which is to bear 25 per cent. of the entire cost of the proceeding, is bounded as follows:

On the north by the centre line of East 50th street; on the east by the centre line of 2d avenue; on the south by the centre line of East 34th street; and on the west by the centre line of 5th avenue, excluding therefrom the territory within the
330 boundary of Zone A."

X. Chapter 635 of the Laws of 1923 amended Section 1-a of Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, so as to read as follows:

"Section 1. Section one-a of Chapter seven hundred and eighty-eight of the laws of nineteen hundred and seventeen, entitled 'An act to provide for the removal of the railroad structure of the Manhattan Railway Company on Forty-second street in the city of New York,' as amended by

chapter six hundred and eleven of the laws of nineteen hundred and nineteen, is hereby amended to read as follows:

§1-a. In the event that on or before the first day of October, nineteen hundred and nineteen, no certificate shall have been made, approved and accepted pursuant to the provisions of the foregoing section, and that no agreement can be reached with the Manhattan Railway Company as to the removal of said tracks, structure, station and appurtenances, the said public service commission on the presentation to it of a certified copy of a resolution of said board of estimate and apportionment containing a request therefor, shall institute a proceeding and conduct a hearing or hearings before said commission for the purpose of determining whether such existing tracks, structure, station and appurtenances are necessary and convenient for the public service or whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of the street. Notice of such proceeding and of the original hearing to be held thereon shall be served upon the said Manhattan Railway Company not less than twenty days before the date fixed for such hearing and shall be published daily for at least fourteen days prior to the date of such hearing in two daily newspapers published in the borough of Manhattan, city of New York. Such hearing may be continued from time to time, but in no event shall the proceeding or the hearings therein cover a period of more than thirty days from and after the date of the original hearing. If after such hearing or hearings the commission shall determine that such existing tracks, struc-

ture, station and appurtenances or any unit or portion thereof are no longer necessary and convenient to the public service, or even if necessary and convenient, that such tracks, structure, station and appurtenances or any unit or portion thereof constitute an impediment or obstruction to the public use of the street, the said commission within thirty days after the date of the final hearing in such proceeding shall make a certificate to that effect and cause a certified copy thereof to be filed in the office of the secretary of state. The commission shall also cause a certified copy of such certificate to be served upon said city and upon said Manhattan Railway Company. Upon the making of such certificate by said commission the city of New York, acting by its board of estimate and apportionment is authorized to acquire by condemnation in the manner prescribed by title four of chapter seventeen of the Greater New York charter as amended the right to remove from that part of East Forty-second street in the borough of Manhattan of said city, described as follows, to wit: Beginning at the corner formed by the intersection of the southerly line of East Forty-second street with the easterly line of Park avenue, thence westerly along the westerly prolongation of the southerly line of East Forty-second street, distance fifty feet; thence northerly at right angles to the line of East Forty-second street, distance one hundred feet to a point in the northerly line of East Forty-second street; thence easterly along the northerly line of East Forty-second street, distance nine hundred and twenty-seven feet; thence southerly, at right angles to the line of East Forty-second street, distance twenty-one feet; thence easterly and parallel with the line of East Forty-second street, distance twenty-four

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feet; thence southerly, at right angles to the line of East Forty-second street, distance thirty-six feet; thence southerly and deflecting to the left thirty-seven degrees, thirty minutes, fifteen seconds, distance fifty-four and two-tenths feet, to a point in the southerly line of East Forty-second street, as it is prolonged across Third avenue; thence westerly along the said prolongation of the southerly line of East Forty-second street, distance thirty-four feet to the corner formed by the intersection of the southerly line of East Forty-second street, with the westerly line of Third Avenue; 338 thence westerly along the southerly line of East Forty-second street, distance nine hundred feet to the point or place of beginning, the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances now existing within and obstructing said part of said street, constituting the existing Forty-second street spur and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever, except as hereinafter provided, whether owned by the Manhattan Railway Company or by whomsoever owned under which said elevated railroad structure, tracks, stations, platforms, stairways and 339 appurtenances were constructed and are maintained and also to extinguish all rights, easements and franchises, by whomsoever owned, to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in said part of said street and to operate cars or trains of any kind whatsoever thereon or thereover upon making compensation to the owners or parties interested therein, but nothing in this act contained shall be deemed to extinguish or impair any existing franchise rights of the Manhattan

340 Railway Company to construct and maintain a circuit breaker and such facilities including stairways in connection with and immediately adjacent to its Third avenue station at Forty-second street as the transit commission may determine to be necessary for the public convenience and necessity and said city may, pursuant to the provisions of title four of chapter seventeen of the Greater New York charter as amended, assess all or any part of the cost, expense, compensation and damages incurred for and on account of thereof, upon real
341 property benefited as a result thereof. Should said board of estimate and apportionment deem it in the public interest that title to said rights, easements, franchises and property should be acquired by the city of New York prior to the entry of the final decree in the proceeding to acquire the same, said board, at any time after the entry of the order of the supreme court granting the application of said city to condemn the same, may, by a three-fourths vote, direct that title to said rights, easements, franchises and property shall be and become vested in said city upon a specified date and upon the date so specified, said city shall be and
342 become seized of said rights, easements, franchises and property. In case title to said rights, easements, franchises and property shall vest in said city pursuant to a resolution of said board prior to the entry of the final decree in the proceeding to acquire the same, interest at the legal rate upon the sum or sums to which the owners or parties interested are justly entitled, upon the date of the vesting of title in said city, from said date to the date of the final decree of the court, shall be awarded by the court, as part of the compensation to which such owners are entitled, and included

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in the assessments for benefits. In case title shall not vest in said city prior to the entry of the final decree, it shall be and become vested on the entry of the said final decree. Said board of estimate and apportionment may determine whether any, and if any what portion of said cost, expense, compensation and damages shall be borne and paid by the city of New York or by one or more boroughs thereof and the whole or remainder of said cost, expense, compensation and damages shall be assessed upon the real property deemed by said board to be benefited by the removal of 344
the structures obstructing the street and the extinguishment of all rights, easements and franchises therein. The determination by said board, as to the portion of said cost, expense, compensation and damages, to be borne by the said city, or by one or more boroughs thereof, and as to the area of the real property benefited thereby, shall be made in the manner provided by the Greater New York charter as amended, as to similar determinations by said board as to streets and parks and said board may amend either of said determinations in the manner therein provided. The 345
portion of the cost, expense, compensation and damages, if any, to be borne by said city or by one or more boroughs thereof, shall be levied and collected as provided by section two hundred and forty-seven of the Greater New York charter as amended. The provisions of this section of this act shall apply to any proceeding to acquire title heretofore authorized pursuant to the provisions of the acts hereby amended and all proceedings heretofore had in relation thereto are hereby ratified and confirmed as legal under and pursuant to this act as hereby amended."

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XI. On June 29, 1923, the Board of Estimate and Apportionment of The City of New York duly adopted a resolution reading as follows:

"Resolved, By the Board of Estimate and Apportionment, that the resolutions with regard to the elevated spur in East 42nd Street, adopted by the Board upon the 30th day of September, 1921, be and hereby are amended by preambles and resolutions as follows:

Whereas, The Public Service Commission for
347 the First District, by an order and determination adopted on April 22, 1921, has certified, pursuant to the provisions of Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, that the tracks, structure, station and appurtenances of the Manhattan Railway Company in East 42nd Street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service, and constitute an impediment and obstruction to the public use of said street:

Resolved, That the Board of Estimate and Ap-
348 portionment, in pursuance of the provisions of Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, and as amended by Chapter 635 of the Laws of 1923, and the Greater New York Charter, as amended, deems it necessary and advisable and for the public interest to condemn and remove from that portion of East 42nd Street described as follows, to wit:

Beginning at the corner formed by the intersection of the southerly line of East Forty-second Street with the easterly line of Park Avenue; thence westerly along the westerly prolongation

of the southerly line at East Forty-second Street, distance fifty feet; thence northerly, at right angles to the line of East Forty-second Street, distance one hundred feet to a point in the northerly line of East Forty-second Street; thence easterly, along the northerly line of East Forty-second Street, distance nine hundred and twenty-seven feet; thence southerly, at right angles to the line of East Forty-second Street, distance twenty-one feet; thence easterly, and parallel with the line of East Forty-second Street, distance twenty-four feet; thence southerly, at right angles to the line of East Forty- 350
second Street, distance thirty-six feet; thence southerly, and deflecting to the left, thirty-seven degrees, thirty minutes, fifteen seconds, distance fifty-four and two-tenths feet, to a point in the southerly line of East Forty-second Street as it is prolonged across Third Avenue; thence westerly, along the said prolongation of the southerly line of East Forty-second Street, distance thirty-four feet to the corner formed by the intersection of the southerly line of East Forty-second Street with the westerly line of Third Avenue; thence westerly, along the southerly line of East Forty-second 351
Street, distance nine hundred feet to the point or place of beginning—such elevated railroad structure, tracks, stations, platforms, stairways and appurtenances now existing within and obstructing said part of said street constituting the existing Forty-second Street Spur and also extinguishing all rights, easements and franchises of every nature whatsoever, except as hereinafter provided, whether owned by the Manhattan Railway Company or by whomsoever owned under which said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances were con-

structed and are maintained, and also to extinguishing all rights, easements and franchises, by whomsoever owned, to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in said part of said street and to operate cars or trains of any kind whatsoever thereon or thereover upon making compensation to the owners or parties interested therein, but nothing in this resolution contained shall be deemed to extinguish or impair any existing franchise rights of the Manhattan
353 Railway Company to construct and maintain a circuit breaker and such facilities including stairways in connection with and immediately adjacent to its Third Avenue station at Forty-second Street as the Transit Commission may determine to be necessary for the public convenience and necessity;

Resolved, That the compensation to be made to the said Manhattan Railway Company, or to whomsoever may be entitled thereto, shall be ascertained and determined by the Supreme Court without a jury;

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Resolved, That the Board of Estimate and Apportionment hereby requests the Corporation Counsel to make application to a Special Term of the Supreme Court, to have the compensation which should justly be made to the said Manhattan Railway Company, or to whomsoever may be entitled thereto, ascertained and determined by the Supreme Court without a jury, and to have said Court assess the costs and expense of the proceedings, including any costs and expense heretofore incurred by the City of New York, for procuring and making necessary rule and damage

maps, or for any other purpose necessary; and appertaining to said condemnation proceedings, upon the real property within the areas of assessment hereinafter determined and to take the necessary proceedings in the name of the City of New York to acquire title to the tracks, structure, station and appurtenances of the Manhattan Railway Company, or of whomsoever may have any title thereto, in that part of East 42nd Street, in the Borough of Manhattan, City of New York, hereinbefore described, and also to the rights, easements and franchises of said Manhattan Railway Company to construct, maintain and use said tracks, structure, station and appurtenances;

Whereas, It appears from the affidavit of the Supervisor of the City Record that due notice was given therein that at the time of the adoption of the resolution directing the institution of proceedings herein, that the Board of Estimate and Apportionment would consider proposed areas of assessment and apportionment of cost as therein described, and would give a public hearing thereon upon the 29th day of June, 1923; and

Whereas, At the aforesaid time a public hearing was given to all persons interested in such proposed areas of assessment and apportionment of cost who appeared, and such proposed areas of assessment and apportionment of cost were duly considered by this Board;

Resolved, That no portion of the cost and expense of said proceedings, incurred by reason of the provisions of Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, and as amended by Chapter 635 of the Laws of 1923, and of the Greater New York Charter as

amended, shall be borne and paid by The City of New York, but that the whole of such cost and expense, including the expense of the Bureau of Street Openings, and all other expenses incurred in connection therewith shall be assessed as follows:

Zone A, which is to bear 65 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between 42nd Street and 43rd Street; on the east by the centre line of Third Avenue; on the south by a line midway between East 41st Street and East 42nd Street; and on the west by the centre line of Park or Fourth Avenue.

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Zone B, which is to bear 5 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East 42nd and East 43rd Street; on the east by the centre line of Second Avenue; on the south by a line midway between East 41st Street and East 42nd Street; and on the west by the centre line of Third Avenue.

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Zone C, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East 42nd Street and East 43rd Street; on the east by the centre line of Park or Fourth Avenue; on the south by a line midway between East 41st Street and East 42nd Street, and on the west by the centre line of Fifth Avenue.

Zone D, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by the centre line of East 50th Street; on the east by the centre line of Second Avenue; on the south by the centre line of East

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34th Street; and on the west by the centre line of Fifth Avenue, excluding therefrom the territory within the boundaries of Zones A, B and C."

XII. The elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, now existing within and obstructing said part of said street, constituting the existing 42nd Street Spur, are shown on a map hereto attached, dated December 28, 1921, and approved by the Board of Estimate and Apportionment on February 17, 1922.

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Wherefore, upon proof to the satisfaction of this Court that notice of this application has been published in the City Record, a corporation newspaper printed and published in the City of New York, in the manner required by law, and that copies of such notice, in the form of handbills, have been posted in three (3) conspicuous places upon or near the property affected by the improvement above mentioned, in the manner required by law, your petitioner prays that the compensation which should justly be made to the Manhattan Railway Company, or to whomsoever may be entitled thereto, for acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also for acquiring the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, be ascertained and determined by this Court without a jury, and that the cost of such improvement be assessed by this Court in accordance with Chapter 788 of the Laws of 1917, as amended by Chapter

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364 611 of the Laws of 1919, and as amended by Chapter 635 of the Laws of 1923, and the Greater New York Charter, as amended, and the resolutions of the Board of Estimate and Apportionment, adopted on the 30th day of September, 1921, and the 29th day of June, 1923, and that an order be entered accordingly.

And your petitioner will ever pray.

Dated, July 13, 1923.

Geo. P. Nicholson, Corporation Counsel.

365 State of New York, County of New York, City of New York, ss.:

George P. Nicholson, being duly sworn, says: That he is the Corporation Counsel of The City of New York; that the petitioner herein is a municipal corporation and that deponent is an officer thereof; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to any matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

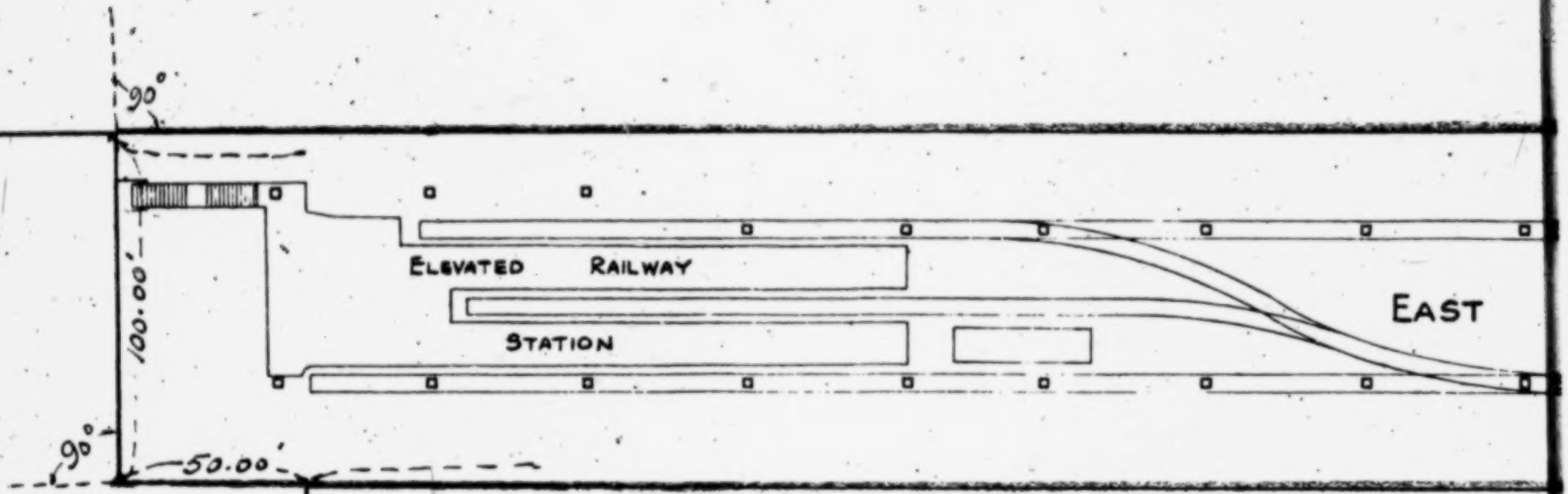
366 That the sources of deponent's knowledge and the grounds of his belief are the minutes of the proceedings of the various boards of the City Government, the resolutions of said boards and the various maps and plans recited in said petition.

Geo. P. Nicholson.

Sworn to before me this 13 day of July, 1923.

Walter E. Dunn, Notary Public, Kings Co. No. 41. Reg. No. 4038. New York County Clerk's No. 54. New York County Register's No. 4044. Bronx Co. Clerk's No. 3. Bronx Co. Register's No. 75. Queens County Clerk's No. 689. Certificate filed in Richmond Co. Commission expires March 30, 1924.

(Rule map follows)

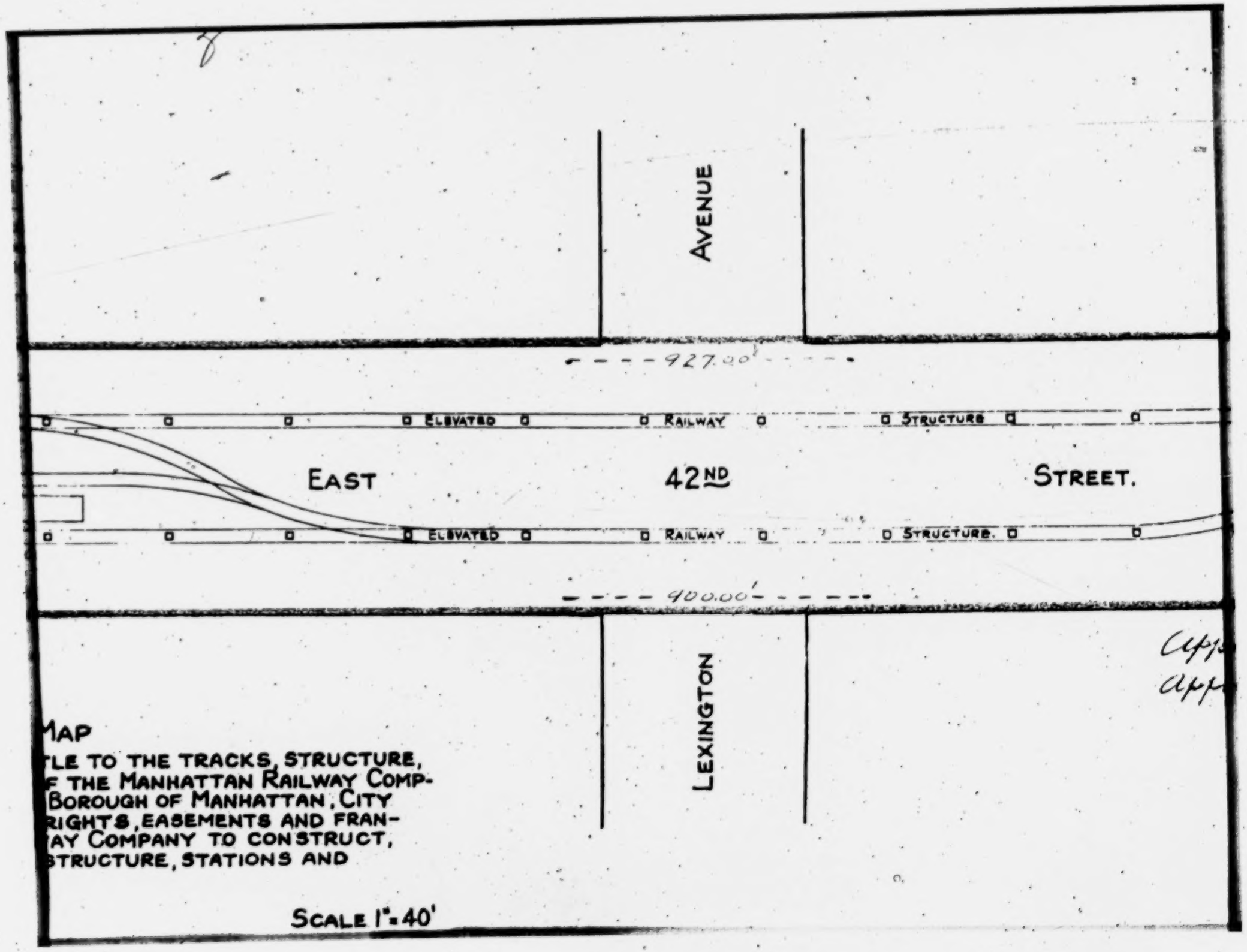


RULE MAP

IN THE MATTER OF ACQUIRING TITLE TO THE TRACKS, STRUCTURE, STATIONS AND APPURTENANCES OF THE MANHATTAN RAILWAY COMPANY IN EAST 42ND STREET IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, AND ALSO TO THE RIGHTS, EASEMENTS AND FRANCHISES OF SAID MANHATTAN RAILWAY COMPANY TO CONSTRUCT, MAINTAIN AND USE SAID TRACKS, STRUCTURE, STATIONS AND APPURTENANCES.

DEC. 28, 1921.

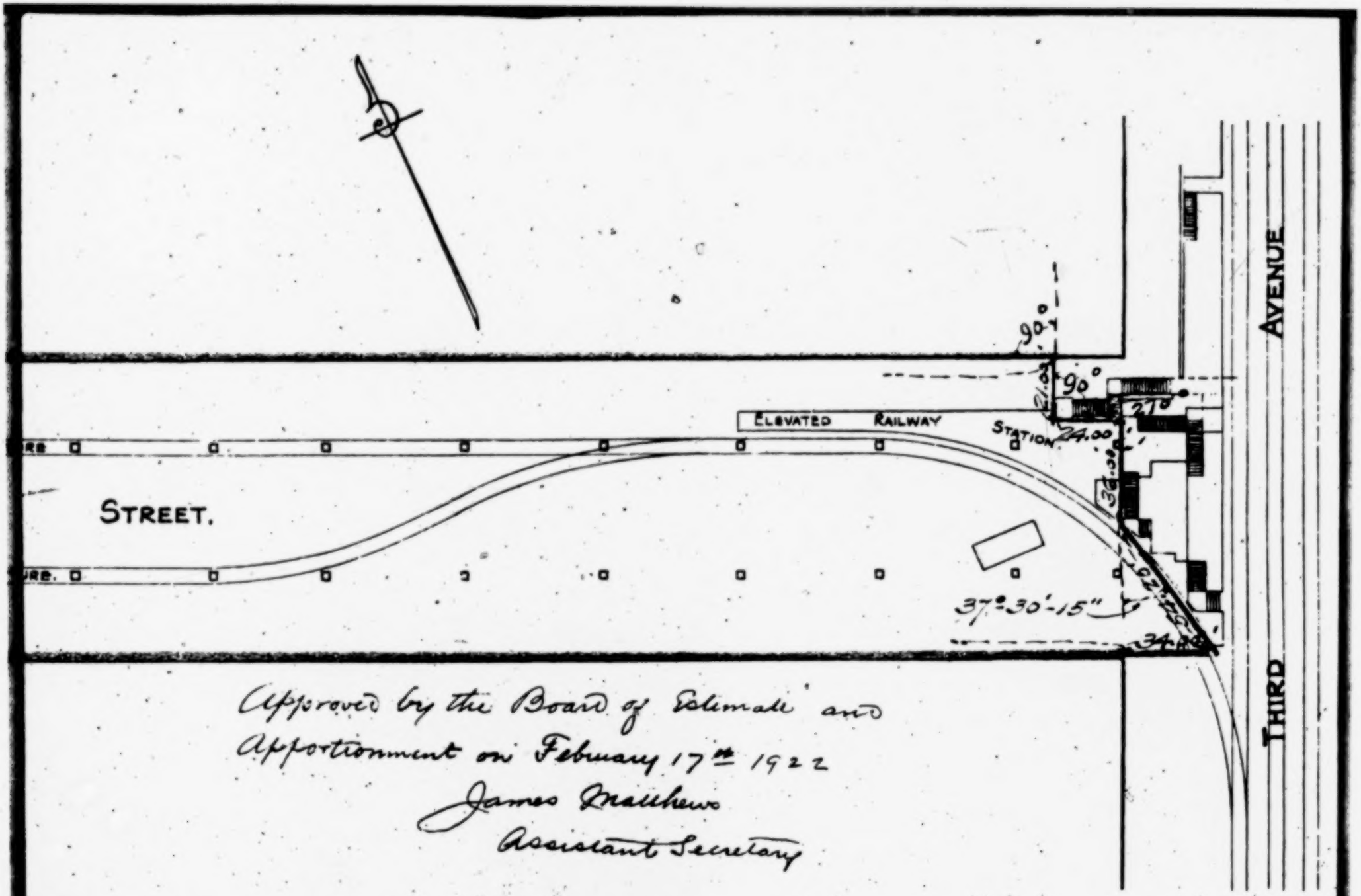
SCALE 1"=40



MAP

TLE TO THE TRACKS, STRUCTURE,
F THE MANHATTAN RAILWAY COMP-
BOROUGH OF MANHATTAN, CITY
RIGHTS, EASEMENTS AND FRAN-
AY COMPANY TO CONSTRUCT,
STRUCTURE, STATIONS AND

SCALE 1"=40'



Approved by the Board of Estimate and Apportionment on February 17th 1922

James Matthews
Assistant Secretary

City Exhibit #1

Schedule "A"—Order and Determination of Public Service Commission (Case No. 2582)—Annexed to Petition of City of New York. 367

(This order and determination is printed at page 1096 of the record.

Schedule "B"—Certificate of Public Service Commission (Case No. 2582)—Annexed to Petition of City of New York.

(This certificate is printed at page 1102 of the record)

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Affidavits of Viertel and McCormick as to Publication of Notice of Application of City for Order to Condemn in City Record.

New York Supreme Court, First Judicial District, New York County.

[SAME TITLE]

State, County and City of New York, ss.:

William Viertel, being duly sworn, says: He resides in The City of New York. He is the Editor of the *City Record*, the official journal of The City of New York. The advertisement hereto annexed has been duly published in said *City Record* 10 days consecutively, previous to the 16th day of July, 1923. 369

William Viertel.

Sworn to before me this 13th day of July, 1923.

Patrick J. Murty, Commissioner of Deeds, City of New York. New York County Clerk's No. 820. Commission Expires November 14, 1924.

370 *Affidavit as to Posting of Notice.*

(The advertisement annexed to the aforesaid affidavit of William Viertel is printed at page 94 of the record)

State, County and City of New York, ss.:

P. H. McCormick, being duly sworn, says: He resides in Brooklyn and is foreman for M. B. Brown Printing & Binding Co., the printers of the *City Record*, the official journal of The City of New York. Said journal is printed daily. The advertisement hereto annexed has been regularly
371 published in said *City Record* 10 days consecutively, previous to the 16th day of July, 1923.

P. H. McCormick.

Sworn to before me this 13th day of July, 1923.

Patrick J. Murty, Commissioner of Deeds, City of New York. New York County Clerk's No. 820. Commission Expires November 14, 1924.

(The advertisement annexed to the aforesaid affidavit of P. H. McCormick is printed at page 94 of the record)

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Affidavit of Murty as to Posting of Notice of Application of City for Order to Condemn.

State, County and City of New York, ss.:

Patrick J. Murty, being duly sworn, says: He is of legal age, and resides in The City of New York. A copy of the annexed notice, in hand bills, was duly posted by him, with paste or other adhesive substance, in three conspicuous places upon or

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near the lands to be affected by this proceeding ten days previous to the 16th day of July, 1923.

Patrick J. Murty.

Sworn to before me this 13th day of July, 1923.

Frank C. Flynn, Commissioner of Deeds, City of New York, Residing in Kings County; Kings County Clerk's No. 153 Register's No. 4070; New York County Clerk's No. 248 Registers No. 24097; Bronx County Clerk's No. 36 Registers No. 3069; Queens County Clerk's No. 5108; Certificate Filed in Richmond County; Com. Expires Nov. 21, 1924

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(The notice annexed to the aforesaid affidavit of Patrick J. Murty is printed at page 94 of the record)

Order of Special Term, Entered July 18, 1923, Granting Application of City of New York to Condemn.

At a Special Term, Part I, of the Supreme Court of the State of New York, First Judicial District, held in and for the County of New York, at the County Court House, Borough of Manhattan, City of New York, on the 18th day of July, 1923.

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Present: Hon. Nathan Bijur, Justice.

In the Matter of the Application of The City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish

376 all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances.

An application having been heretofore made to have the compensation which should justly be made to the respective owners of the real property proposed to be taken herein ascertained and
377 determined by this Court without a jury, and to have the cost of such improvement assessed by this Court in accordance with the resolutions of the Board of Estimate and Apportionment;

On reading and filing the petition of The City of New York, dated July 13th, 1923, the notice of the application of The City of New York, dated July 2nd, 1923, the affidavits of William Viertel, verified the 13th day of July, 1923, of P. H. McCormick, verified the 13th day of July, 1923, and of Patrick J. Murty, verified the 13th day of July, 1923, showing the due publication of said notice in
378 the City Record, a corporation newspaper printed and published in The City of New York, and the due posting thereof in three (3) conspicuous places upon or near the property to be acquired in this proceeding, and the said application having at the time and place mentioned in said notice come on to be heard; the affidavit of J. Osgood Nichols, verified July 17, 1923, the affidavit of Albert T. Swords, verified July 17, 1923, and

After hearing Joel J. Squier, Esq., of counsel, acting in behalf of The City of New York, in support of said motion, and James L. Quackenbush, Esq., appearing in opposition thereto, and due deliberation having been had, it is

Notice of Entry of Order to Condemn. 379

On motion of George P. Nicholson, Esq., Corporation Counsel of The City of New York,

Ordered, That the said motion be and the same hereby is granted; and it is further

Ordered, That the compensation which should justly be made to the respective owners of the real property to be taken be ascertained and determined by this Court without a jury, and that the cost of such improvement be assessed by this Court in accordance with Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 380
1919, and as amended by Chapter 635 of the Laws of 1923, and the Greater New York Charter as amended, and the resolutions adopted by the Board of Estimate and Apportionment on the 30th day of September, 1921, and the 29th day of June, 1923.

Enter, N. B., *J. S. C.*

[Duly entered in the office of the Clerk of the County of New York on July 18, 1923.]

Notice of the Entry of the Order to Condemn and to File Claims. 381

New York Supreme Court, First Judicial District.

[SAME TITLE]

Notice is hereby given, that by an order of the Supreme Court of the State of New York, First Judicial District, dated July 18, 1923, and duly entered and filed in the office of the Clerk of the County of New York, on July 18, 1923, the application of The City of New York to have the compensation which should justly be made to the Manhattan Railway Company, or by whomsoever owned, for acquiring title to the elevated railroad

structure, tracks, stations, platforms, stairways and appurtenances in East 42d street, constituting the existing 42d Street Spur, in the Borough of Manhattan, City of New York, and also for acquiring the right to extinguish all rights, easements and franchises of every nature whatsoever, of said Manhattan Railway Company, or by whomsoever owned, to construct, maintain and use said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances ascertained and determined by the Supreme Court without a
383 jury, and to have the cost of such improvement assessed by the said court in accordance with chapter 788 of the Laws of 1917, as amended by chapter 611 of the Laws of 1919, and as amended by chapter 635 of the Laws of 1923, and the Greater New York Charter, as amended, and the resolutions of the Board of Estimate and Apportionment, adopted on the 30th day of September, 1921, and the 29th day of June, 1923, was granted.

Notice is hereby further given,

that pursuant to section 1000 of the Greater New York Charter, as amended by chapter 606 of the Laws of 1915, the map or survey of the real property to be acquired in this proceeding has been
384 duly filed in the office of the Clerk of the County of New York, and each and every party or person interested in the real property to be taken, and having any claim or demand on account thereof, is hereby required to file his claim, duly verified, describing the real property which the claimant owns, or in which he is interested, and his post-office address, with the Clerk of the County of New York, on or before the 4th day of August, 1923, and to serve on the Corporation Counsel of The City of New York, at his office, Room 1559,

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15th floor, Municipal Building, Borough of Manhattan, City of New York, on or before the 4th day of August, 1923, a copy of such verified claim.

Dated, New York, July 24, 1923.

George P. Nicholson, Corporation Counsel, Municipal Building, Borough of Manhattan, City of New York.

[The foresaid notice was duly published and posted and served as by law required.]

Claim of Manhattan Railway Co.

386

Supreme Court, First Department.

[SAME TITLE]

The claim of Manhattan Railway Company, by Murray, Prentice & Aldrich, its attorneys, respectfully shows:

1. That it is a corporation organized and existing under the laws of the State of New York, owning and operating certain elevated railways in the Boroughs of Manhattan and The Bronx, city of New York, including the elevated railroad structures, tracks, stations, platforms, stairways and appurtenances in East 42nd Street, Park Avenue, Lexington Avenue and Third Avenue, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, together with all rights, easements and franchises of every nature whatsoever, including easements of light, air and access appurtenant to all property in East 42nd Street, Park Avenue, Lexington Avenue or Third Avenue, abutting upon the said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in east 42nd Street,

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388 *Claim of Manhattan Railway Co.*

Park Avenue, Lexington Avenue and Third Avenue, constituting the said 42nd Street spur to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances, which it is informed and believes is included within this proceeding.

2. That its office and post office address is 165 Broadway, Borough of Manhattan, City of New York.

3. Upon information and belief that a portion
389 of the said premises, constituting the said spur, together with all rights, easements and franchises of every nature whatsoever, to construct, maintain and use the said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances constituting said spur, is included in the map or survey of the real property to be acquired in the above entitled proceeding, by reason of which claimant will sustain great loss and damage.

Wherefore, The Manhattan Railway Company
390 claims full and sufficient compensation for the portion of real property, including the said franchises, easements and rights, to be taken and for the loss and damages which will be sustained by the remainder of its property, and that it be granted a hearing on this claim, and such other and further relief as may be just and equitable.

Murray, Prentice & Aldrich, Attorney for Manhattan Railway Company, Office and Post Office Address, 37 Wall Street, Borough of Manhattan, New York City.

To: George P. Nicholson, Esq., Corporation Counsel, Municipal Building, Borough of Manhattan, New York City.

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State of New York, County of New York, ss.

P. V. Trainque, being duly sworn, deposes and says: That he is Assistant Secretary of the Manhattan Railway Company, claimant herein: that he has read the foregoing claim, and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

That the reason why said claim is not verified by said defendant is that said defendant is a domestic corporation: that deponent has derived his knowledge of the facts above set forth from employees, agents and officers of said defendant, and from information acquired by him in the performance of his duties as Assistant Secretary as aforesaid.

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P. V. Trainque.

Sworn to before me, this 1st day of August, 1923.

A. Donald MacKinnon, N. Y. County Clerk's No. 646; N. Y. County Register's No. 4106; Term Expires March 30, 1924. (Seal)

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Claim of Interborough Rapid Transit Co.

Supreme Court, First Department.

[Same Title]

The claim of Interborough Rapid Transit Company, by James L. Quackenbush, its attorney, respectfully shows:

1. That it is a corporation organized and existing under the laws of the State of New York, to which Manhattan Railway Company by an inden-

ture of lease dated January 1, 1903, leased for the period of 999 years from November 1, 1875 certain elevated railways in the Borough of Manhattan, and the Bronx, City of New York, including the elevated railroad structures, tracks, stations, platforms, stairways and appurtenances in East 42d Street, Park Avenue, Lexington Avenue and Third Avenue, constituting the existing 42d Street spur, in the Borough of Manhattan, City of New York, together with all rights, easements and franchises of every nature whatsoever, including easements
395 of light, air and access appurtenant to all property in East 42d Street, Park Avenue, Lexington Avenue or Third Avenue, abutting upon the said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances in East 42d Street, Park Avenue, Lexington Avenue and Third Avenue, constituting the said 42d Street spur, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances, which it is informed and believes is included with this proceeding.

2. That the office and post office address is No.
396 165 Broadway, Borough of Manhattan, City of New York.

3. That it is now in possession of and operating the said railways including the said spur, under the said lease which subject to certain modifications not including the term thereof is in full force and effect.

4. Upon information and belief that a portion of the said premises, constituting the said spur, together with all rights, easements and franchises of every nature whatsoever, to construct, maintain and use the said elevated railroad structure,

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tracks, stations, platforms, stairways and appurtenances constituting said spur, are included in the map or survey of the real property to be acquired in the above entitled proceeding, by reason of which claimant will sustain great loss and damage.

Wherefore the Interborough Rapid Transit Company claims full and sufficient compensation for the portion of real property, including the said leasehold interest, to be taken and for the loss and damage which will be sustained by the remainder of its property, and that it be granted a hearing on this claim, and such other and further relief as may be just and equitable.

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James L. Quackenbush, Attorney for Interborough Rapid Transit Company, Office and Post Office Address, 165 Broadway, Borough of Manhattan, New York City.

To: George P. Nicholson, Corporation Counsel, Municipal Building, Borough of Manhattan, New York City.

State of New York, County of New York, ss:

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H. M. Fisher being duly sworn, deposes and says: That he is Secretary of the Interborough Rapid Transit Company, claimant herein; that he has read the foregoing claim, and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes it to be true. That the reason why said claim is not verified by said defendant is that said defendant is a domestic corporation; that deponent has derived his knowledge of the facts above set forth from employees, agents and offi-

400 cers of said defendant, and from information acquired by him in the performance of his duties as Secretary as aforesaid.

H. M. Fisher.

Sworn to before me, this 27th day of July, 1923.

J. C. Norris, Notary Public, Nassau County, Certificate filed in New York County No. 133; N. Y. County Register's Office No. 5089. Term Expires March 30, 1925.

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401 **Claim of The Equitable Trust Co. of New York.**

Supreme Court, First Department.

[Same Title]

The claim of The Equitable Trust Company of New York as Trustee under the Second Mortgage and Deed of Trust dated June 1st, 1913, made by Manhattan Railway Company to this claimant, respectfully shows:

1. That it is now, and at all the times hereinafter mentioned was, a corporation duly organized 402 and existing under and pursuant to the Laws of the State of New York, and duly authorized to own and hold, in trust, the property in the aforesaid Second Mortgage and Deed of Trust described, including the property embraced within this proceeding, and that it is a trustee under the aforesaid Second Mortgage and Deed of Trust, which instrument secured the payment of the authorized issue of Five million four hundred and nine thousand dollars ($5,409,000) in principal amount of the bonds of Manhattan Railway Company, together with the interest due and to become due thereon, as in said Mortgage and Deed of Trust

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provided, and that of the aforesaid bonds Four million five hundred twenty-three thousand dollars ($4,523,000) of principal amount thereof have been duly authenticated and delivered and issued for value received and are now outstanding secured by the said Mortgage and Deed of Trust and are the valid obligations of the Manhattan Railway Company in the hands of various persons, firms and corporations. That the said Mortgage and Deed of Trust were duly recorded in the Office of the Register of the County of New York in Liber 26 G. M. page 224 on the 2nd day of March, 1916 404
and in the County of Bronx in Liber 1 G. M. page 165 on the 3rd day of March, 1916 and still are and remain unsatisfied of record. That said Mortgage and Deed of Trust were a lien upon the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances in East Forty-second Street, Park Avenue, Lexington Avenue and Third Avenue, constituting what was known as Forty-second Street spur, in the Borough of Manhattan, City and County of New York, together with all rights, easements, privileges and franchises of every nature whatsoever, including easements of 405
light, air and access appurtenant to all property in said East Forty-second Street, Park Avenue, Lexington Avenue and Third Avenue, abutting upon the said elevated structure, tracks, stations, platforms, stairways and appurtenances in the aforesaid streets and avenues, formerly constituting the said spur, subject, however, as to all and any property therein conveyed or assigned, to the mortgage and deed of trust dated February 26th, 1890, to Central Trust Company of New York, known as the Consolidated Mortgage of Manhattan Company and to the indenture supplemental thereto dated June 13, 1899, all of which said prop-

erty it is informed and believes is included within this proceeding, and is a lien on the proceeds thereof and on the awards to be made for the taking thereof. A copy of the Second Mortgage and Deed of Trust is attached hereto.

2. That Claimant's office and post office address is 37 Wall Street, Borough of Manhattan, City, County and State of New York.

3. Upon information and belief, that a portion of the said premises and property, constituting the
407 said spur, together with all rights, easements, privileges and franchises of every nature whatsoever to construct, maintain and use the said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, constituting said spur, is included in the map or survey of the property acquired or extinguished, or to be acquired or extinguished, in the above entitled proceeding, by reason of which this claimant will sustain great loss and damage.

Wherefore said The Equitable Trust Company of New York, as Trustee as aforesaid, claims full
408 and sufficient compensation for the portion of real property, including the said rights, easements, privileges and franchise to be taken or extinguished, or already taken and extinguished, and for the loss and damage which will be sustained by the remainder of its property, and that such compensation shall be paid to it, together with interest at the legal rate thereon from the date of the vesting of title in the City of New York, subject to the lawful claims existing under and by virtue of the said Mortgage and Deed of Trust dated February 26, 1890 to the Central Trust Company of New York, known as the Consolidated Mortgage

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of Manhattan Company and to the Indenture supplemental thereto dated June 13, 1899 as aforesaid, and prays that it be granted a hearing on this claim, and that it have such other and further relief as may be just and equitable.

George Welwood Murray, Attorney for The Equitable Trust Company of New York, as Trustee as aforesaid, 37 Wall Street, New York, N. Y.

To: George P. Nicholson, Esq., Corporation Counsel of The City of New York, Municipal Building, New York, N. Y.

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State of New York, County of New York, ss:

Samuel Armstrong being duly sworn, says: That he is a Vice President of The Equitable Trust Company of New York, which, as Trustee as recited in the foregoing claim, is the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. That the reason why said claim is not verified by said claimant is that 411 said claimant is a domestic corporation; that deponent has derived his knowledge of the facts above set forth from the records, employees, agents and officers of said claimant, and from information acquired by him in the regular performance of his duties as a Vice President as aforesaid.

Samuel Armstrong.

Sworn to before me this 13th
day of June, 1924.

Frederick C. Moller, Notary Public, Richmond; Certificate filed in New York Co. No. 5; Register's Office No. 5087. Term expires March 30, 1925.

412 **Claim of Central Union Trust Co. of New York.**

Supreme Court, First Department.

[SAME TITLE]

The claim of the Central Union Trust Company of New York, as Trustee under the consolidated mortgage, dated February 26, 1890, made by Manhattan Railway Company and The Metropolitan Elevated Railway Company to this claimant, under its then name of Central Trust Company of New York, and under the indenture supplemental to said consolidated mortgage, which said supplemental indenture is dated June 13, 1899, made by said Manhattan Railway Company to claimant under its then name of Central Trust Company of New York, respectfully shows:

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1. That it is now, and at all the times hereinafter mentioned was, a corporation duly organized and existing under and pursuant to the Laws of the State of New York, and duly authorized to own and hold, in trust, the property in the aforesaid mortgages described, including the property embraced within this proceeding, and that it is a trustee under the aforesaid consolidated mortgage and supplemental indenture, both of which instruments secure the payment of the authorized issue of more than Forty million dollars ($40,000,000.) in principal amount of the consolidated bonds of Manhattan Railway Company, together with the interest due and to become due thereon, as in said consolidated mortgage provided, and that of the aforesaid bonds Forty million six hundred and seventy thousand dollars ($40,670,000.) of principal of bonds have been duly authenti-

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cated and delivered and issued for value received and are now outstanding secured by the said mortgages and are the valid obligations of the Manhattan Railway Company in the hands of various persons, firms and corporations. That said mortgage was duly recorded in the Office of the Register of the County of New York in Liber 2538 of Mortgages page 157 on the 26th day of February, 1890, and still is and remains unsatisfied of record, and that said supplemental indenture was duly recorded in the Office of the Register of the County of New York in Block Series Liber 7 of General Mortgages, page 265, on the 12th day of July, 1899, at 12 o'clock noon. That said mortgage and indenture of mortgage were a first lien upon the Elevated Railroad structures, tracks, stations, platforms, stairways and appurtenances in East Forty-second Street, Park Avenue, Lexington Avenue and Third Avenue, constituting what was known as Forty-second Street Spur, in the Borough of Manhattan, City and County of New York, together with all rights, easements, privileges and franchises of every nature whatsoever, including easements of light, air and access appurtenant to all property in said East Forty-second Street, Park Avenue, Lexington Avenue and Third Avenue, abutting upon the said elevated structure, tracks, stations, platforms, stairways and appurtenances in the aforesaid streets and avenues, formerly constituting the said spur, all of which said property it is informed and believes is included within this proceeding, and is a first lien on the proceeds thereof and on the awards to be made for the taking thereof. 415 416 417

2. That its office and post office address is 80 Broadway, Borough of Manhattan, City, County and State of New York.

418 3. Upon information and belief, that a portion of the said premises and property, constituting the said spur, together with all rights, easements, privileges and franchises of every nature whatsoever to construct, maintain and use the said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, constituting said spur, is included in the map or survey of the property acquired or extinguished, or to be acquired or extinguished, in the above entitled proceeding, by reason of which this claimant will
419 sustain great loss and damage.

Wherefore said Central Union Trust Company of New York, as Trustee as aforesaid, claims full and sufficient compensation for the portion of real property, including the said rights, easements, privileges and franchises to be taken or extinguished, or already taken and extinguished, and for the loss and damage which will be sustained by the remainder of its property, and that such compensation shall be paid to it, together with interest at the legal rate thereon from the date of the vesting of title in the City of New York,
420 and that it be granted a hearing on this claim, and such other and further relief as may be just and equitable.

Davies, Auerbach & Cornell, Attorneys for Central Union Trust Company of New York, as Trustee as aforesaid, Office and Post Office Address: 34 Nassau Street, Borough of Manhattan, New York City, N. Y.

To: George P. Nicholson, Esq., Corporation Counsel, Municipal Building, Borough of Manhattan, New York City.

Notice of Trial.

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State of New York, County of New York, ss:

Charles J. Farrell, being duly sworn, says: That he is an Assistant Secretary of Central Union Trust Company of New York, which, as Trustee as recited in the foregoing claim, is the claimant herein; that he has read the foregoing claim and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. That the reason why said claim is not verified by said claimant is that said 422
claimant is a domestic corporation; that deponent has derived his knowledge of the facts above set forth from the records, employees, agents and officers of said claimant, and from information acquired by him in the regular performance of his duties as Assistant Secretary as aforesaid.

Charles J. Farrell

Sworn to before me this 6th day of June, 1924.

M. J. Cullen, Notary Public, Bronx County No. 66. Certificate filed in New York County No. 216. 423
(Seal)

Notice of Trial.

New York Supreme Court, New York County.

[SAME TITLE]

Please Take Notice, that the issues in this proceeding will be brought to trial before Hon. James O'Malley one of the Justices of the Supreme Court of the First Judicial District, at an extraordinary Special Term of the Supreme Court of the State

424 of New York, First Judicial District to be held in and for the County of New York at the County Court House in the Borough of Manhattan, City of New York on the 27th day of September, 1923, at 10:00 o'clock of the forenoon of that day pursuant to the following order of his excellency, the Governor.

"State of New York, Executive Chamber, Albany.

It appearing to my satisfaction that the public interest requires it

425 Therefore, in accordance with the statute in such case made and provided, I do hereby appoint an Extraordinary Special Term of the Supreme Court to be held at the County Court House in the County of New York on the twenty-seventh day of September, 1923, at ten o'clock in the forenoon of that day, for the purpose of acting on the matter of

'The application of the City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, of the Manhattan Railway Company, or by whomsoever owned, in East 42nd
426 Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances.' and of conducting the trial of the same for the purpose of determining the damages, if any, to be paid by said City of New York for the taking of said property and the assessment of said damages

upon the real property situated within the Zones of assessment and in the proportions heretofore designated by the Board of Estimate and Apportionment of the City of New York and for such other business as may be brought before said Term, and which term is to continue as long as may be necessary for the disposal of the business which may be brought before it, and I do hereby designate the Honorable James O'Malley, who is a Justice of the Supreme Court of the First Judicial District to hold said Extraordinary Special Term of the Supreme Court as hereinbefore described.

And I do hereby direct that notice of such appointment be given by publication of this order in the 'New York Law Journal,' 'New York Times,' 'New York World,' and 'New York Herald,' respectively, newspapers published in the City and County of New York, N. Y., said publication to appear in each of the said newspapers on the seventeenth day of September, 1923, and on the twentieth day of September, 1923.

This order supersedes and revokes my prior order in the premises dated September eleventh, 1923.

Given under my hand and the Privy Seal of the State at the Capitol in the City of Albany this fourteenth day of September in the year of our Lord one thousand nine hundred and twenty-three.

(Signed) Alfred E. Smith (L. S.)

By the Governor: George R. Van Namee, Secretary to the Governor."

Dated, September 17, 1923.

Yours etc., George P. Nicholson, Corporation Counsel, Attorney for The City of New York, Office

and Post Office Address, Municipal Building, Borough of Manhattan, City of New York.

To: James L. Quackenbush, Esq., Attorney for Interborough Rapid Transit Company, No. 165 Broadway, Borough of Manhattan, City of New York. Murray, Prentice & Aldrich, Esqs., Attorneys for Manhattan Railway Company, No. 37 Wall Street, Borough of Manhattan, City of New York.

[A copy of the aforesaid notice of trial was duly served on Messrs. Murray, Prentice and Aldrich, attorneys for the Manhattan Railway Company and on James L. Quackenbush, Esq., attorney for the Interborough Rapid Transit Company]

Order Appointing Extraordinary Term of Supreme Court.

State of New York, Executive Chamber, Albany. [Seal]

It appearing to my satisfaction that the public interest requires it

Therefore, in accordance with the statute in such case made and provided, I do hereby appoint an Extraordinary Special Term of the Supreme Court to be held at the County Court House in the County of New York on the twenty-seventh day of September, 1923, at ten o'clock in the forenoon of that day, for the purpose of acting on the matter of

"The application of the City of New York, relative to acquiring title to the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances of the Manhattan Railway Company, or by whomsoever owned, in East 42nd Street, constituting the existing 42nd Street Spur, in the Borough of Manhattan, City of New York, and also to acquire the right to extinguish all

rights, easements and franchises of every nature whatsoever of said Manhattan Railway Company or by whomsoever owned, to construct, maintain and use said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances" and of conducting the trial of the same for the purpose of determining the damages, if any, to be paid by said City of New York for the taking of said property and the assessment of said damages upon the real property situated within the Zones of assessment and in the proportions heretofore designated by the Board of Estimate and Apportionment of the City of New York and for such other business as may be brought before said Term, and which Term is to continue as long as may be necessary for the disposal of the business which may be brought before it, and I do hereby designate the Honorable James O'Malley, who is a Justice of the Supreme Court of the First Judicial District to hold said Extraordinary Special Term of the Supreme Court as hereinbefore described.

And I do hereby direct that notice of such appointment be given by publication of this order in the "New York Law Journal," "New York Times," "New York World," and "New York Herald," respectively, newspapers published in the City and County of New York, N. Y., said publication to appear in each of the said newspapers on the seventeenth day of September, 1923 and on the twentieth day of September, 1923.

This order supersedes and revokes my prior order in the premises dated September eleventh, 1923.

Given under my hand and the Privy Seal of the State at the Capitol in the City of Albany this

fourteenth day of September, in the year of our Lord one thousand nine hundred and twenty-three.

(signed) Alfred E. Smith

(Great Seal of the State of New York)

By the Governor: George R. Van Namee, Secretary to the Governor.

State of New York, County of New York, ss:

I, James A. Donegan, Clerk of the said County and Clerk of the Supreme Court of said State for said County, do certify, that I have compared the preceding with the original Order appointing extraordinary Term of Supreme Court on file in my office, and that the said is a correct transcript therefrom, and of the whole of such original. Indorsed filed. September 15th, 1923.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, this 15th day of September, 1923.

James A. Donegan, Clerk. [Seal]

Notice of Filing Tentative Decree and to File Objections.

New York Supreme Court, First Judicial District.

[SAME TITLE]

Notice Is Hereby Given to all parties interested in the above entitled proceeding, as follows:

First: That the above named Court, after considering the testimony and proofs submitted on the trial of the above entitled proceeding, has completed its estimate of the compensation which should be made by The City of New York to the respective owners of the real property to be ac-

quired in this proceeding, and has made an assessment of the value of the benefit herein, and the advantage of the improvement to the respective owners of the real property within the area of assessment for benefit herein, and the tentative decree of the said Court as to awards for damages and as to assessments for benefit was signed on the 4th day of April 1927, by Hon. James O'Malley Justice of the Supreme Court presiding at the trial of the above entitled proceeding, and was filed with the Clerk of the County of New York on the 11th day of April, 1927, for the inspection of whomsoever it may concern.

Second: That the said Court has assessed all the real property within the area of assessment filed and prescribed as the area of assessment for benefit by the Board of Estimate and Apportionment on the 29th day of June 1923, and that the said area of assessment includes the parcels of real property situate and being in the Borough of Manhattan in The City of New York, which, taken together, are bounded and assessed as follows:

Zone A, which is to bear 65 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between 42d street and 43d street; on the east by the centre line of 3d avenue; on the south by a line midway between East 41st street and East 42d street; and on the west by the centre line of Park or 4th avenue.

Zone B, which is to bear 5 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East 42d street and East 43d street; on the east by the

442 centre line of 2d avenue; on the south by a line midway between East 41st street and East 42d street; and on the west by the centre line of 3d avenue.

Zone C, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by a line midway between East 42d street and East 43d street; on the east by the centre line of Park or 4th avenue; on the south
443 by a line midway between East 41st street and East 42d street, and on the west by the centre line of 5th avenue.

Zone D, which is to bear 15 per cent. of the entire cost of the proceedings, is bounded as follows:

On the north by the centre line of East 50th street; on the east by the centre line of 2d avenue; on the south by the centre line of East 34th Street; and on the west by the centre line of 5th avenue, excluding therefrom the territory within the boundaries of the Zones A, B and C.

444 Third: That The City of New York, and all other parties interested in such proceeding or in any of the real property affected thereby, having any objections thereto, shall file such objections in writing, duly verified, in the manner required by law for the verification of pleadings in an action, setting forth the real property owned by the objector and his post office address, with the Clerk of the County of New York, on or before the 2nd day of May 1927, and parties other than The City of New York, shall within the same time serve on the Corporation Counsel of The City of

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New York, at his office, Municipal Building, Room 1559, Chambers and Centre Streets, in the Borough of Manhattan, City of New York, a copy of such verified objections.

Fourth: That on the 25th day of May 1927, at 10 o'clock in the forenoon of that day, or as soon thereafter as Counsel can be heard, the Corporation Counsel of The City of New York will apply to the Hon. James O'Malley, the Justice of The Supreme Court who signed said tentative decree at Chambers, Appellate Division, Madison Avenue and 25th Street, in the Borough of Manhattan, to 446 fix a time when said Justice will hear the parties who will have filed objections to the said tentative decree.

Dated, New York, April 11, 1927.

George P. Nicholson, Corporation Counsel, Office and Post Office Address, Municipal Building, New York City,

[The aforesaid notice was duly published and posted and served as by law required.]

Objections of The City of New York to Tentative Decree. 447

New York Supreme Court, New York County.

[SAME TITLE]

To the Honorable the Supreme Court of the State of New York:

The City of New York hereby objects to the Tentative Decree of the Court in the above entitled proceeding, signed on the 8th day of April, 1927, and filed with the Clerk of the County of New York on the 11th day of April, 1927, upon the following grounds:

448 *Objections of The City of New York.*

First: That the award made by the Court for the property acquired herein and designated in the Tentative Decree as Damage Parcel No. 1, is grossly excessive as will appear from the testimony offered on behalf of the City.

Second: That said award is so excessive as to indicate that the Court adopted an erroneous theory in determining said award.

Third: That the Court did adopt an erroneous theory in determining said award.

449 Fourth: That said award is arbitrary, speculative, fanciful and conjectural as will appear from the testimony offered on behalf of the City.

Fifth: That the Court erroneously disregarded all the testimony offered by the City as to the fair and reasonable market value of the property acquired herein on the date that the title vested in The City of New York.

Sixth: That the Court erroneously admitted in evidence, over the objection of the City of New York, testimony which was immaterial and irrele-
450 vant.

Seventh: That the Court erroneously admitted in evidence as bearing upon the value of the property acquired herein, over the objection of The City of New York, testimony of real estate witnesses called by the Railway Company as to the benefit which accrued to the property fronting upon that part of East 42nd Street in which the elevated railroad structure was located, by reason of the acquisition of the property herein and the removal of the elevated railroad structure, stations, platforms, etc.

Objections of The City of New York.

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Eighth: That the Court, in determining the said award, erroneously took into consideration and was influenced by the testimony of the real estate witnesses called by the Railway Company as to the benefit which accrued to the property fronting upon that part of East 42nd Street in which the elevated railroad structure was located by reason of the acquisition of the property herein and the removal of the elevated railroad structure, station, platforms, etc.

Ninth: That having found that the rights acquired by the Railway Company from the State, 452
City and abutting property owners constituted an essential part of the railroad and could be used solely for railroad purposes, and having also found that the railroad was operated at a loss to the Company, the Court in determining said award erroneously took into consideration and was erroneously influenced by the amount of the damages paid to the abutting property owners by the Railway Company for the impairment of their easements of light, air and access in East 42nd Street, by reason of the maintenance and operation of said elevated railroad.

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Tenth: That having found that the rights acquired by the Railway Company from the State, City and abutting property owners constituted an essential part of the railroad and could be used solely for railroad purposes, and having also found that the railroad was operated at a loss to the Company, the Court in determining the award erroneously took into consideration and was erroneously influenced by the amount which the Railway Company claimed would be the cost of acquiring said rights from the abutting owners on

454 the date that title vested herein, but which amount was no more than the opinion of the said Company's witness as to the benefit which accrued to the property fronting upon that part of East 42nd Street in which the elevated railroad structure was located, by reason of the acquisition of the property herein and the removal of the elevated railroad structure, stations, platforms, etc.

Eleventh: That having found that the rights acquired by the Railway Company, from the State, City and abutting property owners, constituted an
455 essential part of the railroad and could be used solely for railroad purposes and having also found that the railroad was operated at a loss to the Company, the Court erred in considering and basing the award upon either the original or the present cost of the acquisition of said rights or upon both.

Twelfth: That having found that the rights acquired by the Railway Company from the State, City and abutting property owners constituted an essential part of the railroad, and could be used solely for railroad purposes, and having also found
456 that the railroad was operated at a loss to the Company, and having further found, that there was no trend of traffic improvement which would turn the losses to future net earnings, the Court erred in finding more than a salvage value for the property acquired herein.

Thirteenth: The Court erroneously based the award upon an assumption or conjecture or speculation as to the possibility that something might happen in the future which might turn the losses of operation of the railroad into profits during the long term period of the franchise.

457

Joel J. Squier, Assistant Corporation Counsel in Charge of the Bureau of Street Openings.

State of New York, City and County of New York, ss.:

Joel J. Squier, being duly sworn, says: That he is an Assistant Corporation Counsel in Charge of the Bureau of Street Openings, Law Department of The City of New York; that the objector herein is a municipal corporation, and that the deponent is an officer thereof; that deponent has read the foregoing objections and knows the contents thereof; and that the same are true of his own knowledge, except as to the matters that are stated herein to be alleged on information and belief, and as to those matters, he believes them to be true. That the reason why this verification is made by deponent is because the material matters alleged are within the personal knowledge of said deponent, and the result of his knowledge of the questions involved.

458

Joel J. Squier.

Sworn to before me this 27th day of April, 1927.

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James Hurley, Notary Public, N. Y. Co. No. 296, Reg. No. 1071. Commission expires March 20, 1923.

Supplemental Objections of The City of New York to Tentative Decree.

New York Supreme Court, First Judicial District, County of New York.

[SAME TITLE]

To the Honorable, the Supreme Court of the State of New York.

460 *Supp. Objections of The City of New York.*

The City of New York hereby objects to the tentative decree of the Court herein upon the further and additional grounds:

That the award made herein for the value of the alleged rights, easements and franchises of the Manhattan Railway Company and its lessees is illegal for the reason that said rights, easements and franchises were acquired by said Companies under the provisions of the Rapid Transit Act of 1875 and subsequent legislation which provided and contemplated that the life of the said rights,
461 easements and franchises continued and were to continue only so long as the operation of said elevated railway spur was found to be a matter of public necessity and convenience. That the said rights, easements and franchises were terminated by the decision and findings of the Public Service Commission of the First District in April, 1921, and that after said date there were in said 42nd Street no rights, easements and franchises belonging to said railway companies.

Joel J. Squier, Assistant Corporation Counsel in Charge of the Bureau of Street Openings.

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State of New York, County of New York, City of New York, ss.:

Joel J. Squier, being duly sworn, says: That he is an Assistant Corporation Counsel in Charge of the Bureau of Street Openings, Law Department of The City of New York; that the objector herein is a municipal corporation and that the deponent is an officer thereof; that deponent has read the foregoing objections and knows the contents thereof; and that the same are true to his own knowledge, except as to the matters that are stated there-

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in to be alleged upon information and belief and as to those matters he believes it to be true. That the reason why this verification is made by deponent is because the material matters alleged are within the personal knowledge of said deponent, and the result of his knowledge of the questions involved.

Joel J. Squier.

Sworn to before me this 21st day of October, 1927.

R. M. Wise, Commissioner of Deeds, City of New York.

464

Objections of Manhattan Railway Co. to Tentative Decree.

Supreme Court, New York County, Extraordinary Special Term.

[Same Title]

Objections of the Manhattan Railway Company, as owner and lessor, to the Tentative Decree.

The Manhattan Railway Company, whose address is 165 Broadway, New York City, is the owner of the property taken in condemnation in the above entitled proceeding. The property taken is the elevated railway which was on East 42nd Street in the Borough of Manhattan (including the franchise to construct and operate an elevated railroad on East 42nd Street, the easements of light, air and access in the street where the railroad stood and the railroad structure in the street) which constituted that part of the Third Avenue railway line owned by the Manhattan Railway Company which extended from Third Avenue, on East 42nd Street, to Park Avenue; the property

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466 taken is described in detail in the statute authorizing the condemnation and in the petition of The City of New York by which this proceeding was instituted.

In 1903 the Manhattan Railway Company leased its elevated railway system in the Boroughs of Manhattan and The Bronx, including as part of the Third Avenue line thereof the property taken in this proceeding, to the Interborough Rapid Transit Company as lessee for a period of 999 years from November 1, 1875. At the time the
467 present proceeding was begun and the property taken, the Interborough Rapid Transit Company was in possession of the property so leased, including the property taken in this proceeding. The property when taken was subject to the lien of the Consolidated Mortgage of the Manhattan Railway Company to Central Union Trust Company as Trustee, dated February 26, 1890, and to the lien of the Second Mortgage of the Manhattan Railway Company to The Equitable Trust Company of New York as Trustee, dated June 1, 1913.

The proceeding was instituted under a special
468 statute (Chapter 635 of the Laws of 1923) at an Extraordinary Special Term of the Supreme Court without a jury. The Manhattan Railway Company, as owner and lessor of the property taken, duly filed its verified claim in this proceeding. Claims were filed also by three other claimants, namely, the Interborough Rapid Transit Company as lessee, the Central Union Trust Company as trustee of the Consolidated Mortgage of the Manhattan Railway Company securing certain of its outstanding bonds, and The Equitable Trust Company of New York as trustee of the Second Mort-

gage of the Manhattan Railway Company securing certain of its outstanding bonds. 469

After hearing the testimony the Court caused a tentative decree to be filed on the 11th day of April, 1927, in the office of the Clerk of the County of New York, and notice of the filing thereof was published in the City Record on April 11, 1927. The tentative decree contained an award of $975.438 as compensation for the property taken. The Court filed an opinion in April, 1926, in which it set forth the principles of law on which it made the award. The Court did not allocate the amount awarded as 470
compensation among the respective claimants as these claimants had stipulated in open court that they would first undertake to allocate the award without the assistance of the Court.

The Manhattan Railway Company, a claimant in this proceeding, as owner and lessor of the property taken, makes the following objections to the tentative decree:

1. The property is taken and the award is made in violation of the provisions of

(a) Article I, Section 6 of the Constitution of the State of New York, which provides that private property shall not be taken for public use without just compensation; 471

(b) Article I, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts; and

(c) The Fourteenth Amendment to the Constitution of the United States, Section I thereof, which provides that no State shall deprive any person of life, liberty or property without due process of law,

472 in that the statute authorizing this proceeding, the amount awarded in the tentative decree for the property taken in this proceeding and the rule of law adopted by this Court in respect thereto impair the obligation of contracts, to wit, the deeds of conveyance and the title by prescription, under which the claimant held property taken in this proceeding, and in that the amount awarded in the tentative decree for the property taken in this proceeding does not constitute just compensation for the property so taken and that the proceed-
473 ings herein and the fact and the amount of said award do not constitute due process of law; and this claimant hereby draws in question the constitutionality of said award and of said decree and of all provisions thereof and/or of statutes of or law assumed or asserted to authorize the said award and the enforcement thereof.

2. The property is taken and the award is made in violation of

(a) the Statute (Laws of New York, 1923, Chapter 635) under which this proceeding is conducted
474 which provides, among other things, that just compensation shall be awarded for the property taken; and

(b) the principles of law under which compensation for private property taken for public use is to be determined, and particularly compensation for property of the kind taken in this proceeding, in that the amount awarded in the tentative decree for the property taken in this proceeding does not constitute just compensation for the property so taken.

3. The Court erred in determining the value of

the easements of light, air and access, or of the property right therein, so taken, and in determining the value of the franchise so taken, and the Court thus erred in determining the compensation for the property taken. 475

The Court determined the compensation for the property taken by ascertaining (1) the value of the easements of light, air and access, or the property right of the railroad company therein so taken; (2) the value of the franchise to construct and operate the elevated railroad in East 42nd Street; and (3) the value of the physical railroad structure erected in East 42nd Street under the franchise. 476

But the Court erred in determining the extent of the property right of the claimant in the easements of light, air and access in East 42nd Street and the value of such property right in the easements, and in determining the value of the franchise, and thus erred in determining the compensation for the property taken. The Court recognized that under the laws of this State the easements of light, air and access are private property in the bed of the street and that notwithstanding the franchise granted by the City and the State to the railroad company authorizing it to construct its railroad in the street in the manner in which it was actually constructed and to operate the railroad in perpetuity in the manner in which it was operated, the construction and operation of the railroad in East 42nd Street were an invasion of the private property rights in the street of the owners of the property abutting on the street and that the construction and operation of the railroad were a taking of such private property for public use; 477

478 that the abutters had the legal right, unless just compensation was paid for the property right in the street thus taken by the railroad company, to have the operation of the trains over the elevated railroad in East 42nd Street restrained by injunction; and the Court further recognized that the railroad company, in order to complete the right to have its railroad in the street, paid to the abutters the value of these easements of light, air and access (except the easements which the railroad company acquired by prescription), and the abutters made
479 voluntary conveyances of the easements to the railroad company; but the Court erred in deciding that the railroad company acquired only the right to impair the easements of light, air and access and to keep them impaired in perpetuity, which decision is based on the erroneous principle asserted by the Court that as the railroad company did not own the abutting property it could not own the easements of light, air and access or any part thereof or any property right therein. The Court should have decided, and it was error not to decide, that under the laws of this State the
480 railroad company as the owner of the franchise and the property right in the street created under the franchise, could own easements of light, air and access, the ownership of which was necessary to complete its right to construct and operate its railroad, even although the railroad company did not own property abutting on the street and that as the railroad company had paid the full value of the easements (except as to the easements acquired by prescription) and the abutting property owners had made voluntary conveyances of such easements, the railroad company did acquire and did own the easements of light, air and access so

conveyed to it, or a part thereof or a property right therein. The Court should also have decided, and it was error not to decide, that in accordance with the decision of the Court of Appeals of this State the railroad company acquired by prescription certain easements of light, air and access on East 42nd Street by entering into possession thereof by the construction of the railroad under color of title evidenced by the franchise and by possessing the easements for twenty years through the operation of the railroad. 481

The Court erred in determining the value of the easements or property right in the easements taken from the railroad company in this proceeding to be $750,000, as the value of the railroad company's interest in the easements, whether the railroad company acquired the ownership of the easements or a part thereof or a property right therein, or acquired merely the right to impair the easements and to keep them impaired in perpetuity, was at least $3,600,000. The Court erroneously decided that the value of the easements or property right in the easements taken from the railroad company in this proceeding must be determined by a consideration of such elements taken together as the original cost to the railroad company of such easements or property right therein, the cost to replace such easements or property right therein at the time they were taken from the railroad company, the depreciation, the earning power of the property taken and that more weight must be given to the original cost than to the cost of reproduction, for the reason that in the Court's judgment the value of the railroad had not kept pace with the value of the abutting property. 482 483

484 *Objections of Manhattan Railway Co.*

The Court should have decided, and it was error not to decide, that the easements of light, air and access are a species of real property and the value of real property is always ascertained by the Courts, whether in condemnation or for rate making, by the cost to acquire similar adjacent real property on the day of valuation, and the Court erred by failing to decide that the value of the easements or the interest therein taken in this proceeding should be determined by the cost to acquire similar easements or an interest therein at
485 the time the property was taken in this proceeding.

The Court should have decided, and it was error not to decide, that the principles of law by which the value of the easements or an interest therein must be determined were established by the Court of Appeals of this State at the time the railroad company took the easements from the owners of the abutting property, and the value thereof is the difference in the value of the abutting property with and without the easements. Under these established principles of law, the value of the ease-
486 ments is the amount which it would be necessary to pay to acquire the particular easements or similar easements at the time the valuation is to be made. The decrease in the value of the abutting property caused by the taking of the easements or the increase in the value of the abutting property caused by the restoration of such easements measures the value of the easements. The testimony showed the actual increase in the value of the abutting properties caused by the taking of the easements by the city in this proceeding; while the easements were taken from the railroad company and not from the owners of the abutting

property, the city assessed upon the parties benefited, who are principally the owners of the abutting property, the amount which should be awarded as compensation for the taking of the property, and this caused the same increase in the value of the abutting properties as if the owners of the abutting properties had actually reacquired the easements. The Court should have decided, and it was error not to decide, that the value of the easements or interest in the easements taken in this proceeding is measured by the actual increase in the value of the abutting property caused by the taking of such easements or interest therein. The Court should have decided, and it was error not to decide, that the value of the easements or interest in the easements taken in this proceeding is $3,600,000, as the claimants offered evidence which showed that if this right were to be acquired on the day when title vested in the city it would have cost the sum of $3,600,000, and the city did not attempt to controvert this proof.

The Court erred in determining that the value of the franchise was $25,000 and in failing to determine that its value was at least $300,000, and thus erred in determining just compensation for the property taken. The Court recognized that under the laws of this State the franchise to construct and operate an elevated railroad in the street created an interest in the street of the nature of real property, which interest the Court regarded as a public easement, but the Court erroneously decided that the value of the franchise could not be determined through the value of this interest in the street, although the city had in practice established rules for determining the value of such an interest, and the Court erroneously decided

490 that the value of the franchise must be determined by a consideration of the present and prospective earning power of the property taken and of the value of the interest in the street created by the franchise.

The Court erred in deciding that the just compensation for the property taken was $975,438 and should have decided, and it was error not to decide, that the just compensation was $1,100,438.

The Court should, therefore, make the following corrections and alterations in the tentative de-
491 cree as to the award of compensation for the property taken:

It should increase the award from $975,438 to $1,100,438.

Wherefore, the Manhattan Railway Company, as owner and lessor of the property taken, a claimant in this proceeding, objecting to the tentative decree, prays that it may be granted a hearing on its objections and that the Court may correct and alter the decree, and for such other and further relief as may be proper.

492 Murray, Aldrich & Roberts, Attorneys for Manhattan Railway Company, Office and Post Office Address, 37 Wall Street, Borough of Manhattan, City of New York.

State of New York, County of New York, ss.

William Roberts, being duly sworn, deposes and says: that he is a member of the firm of Murray, Aldrich & Roberts and as such is familiar with the facts and circumstances in the within proceeding; that he has read the foregoing objections and the same are true to his own knowledge except as to

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the matters therein stated to be alleged upon information and belief and as to those matters he believes them to be true; that the sources of deponent's information and the grounds of his belief are the records of the above proceedings and of the Manhattan Railway Company.

(Sgd.) William Roberts.

Sworn to before me this 2nd day of May, 1927.

Zelma Roberts, Notary Public, Westchester County; N. Y. Co. Clks. No. 598, Reg. No. 8408, Commission expires March 30, 1928.

494

Objections of Interborough Rapid Transit Co. to Tentative Decree.

Supreme Court, First Department.

[SAME TITLE]

Objections of the Claimant Interborough Rapid Transit Company to the Tentative Decree Herein Filed on the 11th Day of April, 1927, in the Office of the Clerk of the County of New York.

495

The claimant, Interborough Rapid Transit Company, a corporation created by and existing under the laws of the State of New York, was on the date of the vesting of title herein in The City of New York December 7th, 1923, in possession as Lessee of the claimant Manhattan Railway Company under a lease, dated January 1, 1903 and for the term of 999 years from November 1, 1875, of all the railroads, franchises and property of the said Manhattan Railway Company, excepting only such of its franchises as may be necessary to preserve its corporate existence, including all the property taken, impaired or damaged in this proceeding

496 and in respect of which the sum of $975,438.00 is awarded in and by the tentative decree herein to the said Manhattan Railway Company subject to the said leasehold interest of this claimant.

The property so taken consists of an elevated railway forming part of the Manhattan Railway system and the Third Avenue line thereof, extending upon, in and over East 42nd Street in the Borough of Manhattan, City of New York, from Third Avenue to a point at or near the junction of East 42nd Street with Park Avenue, together with all
497 the property rights, franchises and damages taken, impaired or suffered by virtue of this proceeding, including the cost to this claimant of reconstructing portions of the said Third Avenue line, necessitated and required in the interest of public necessity and convenience by reason of the taking of the said spur as found and directed by the order of the Transit Commission pursuant to the special legislative Acts, to-wit: Chapter 788 of the Laws of 1917, Chapter 611 of the Laws of 1919 and Chapter 635 of the Laws of 1923, authorizing this proceeding.

498 The said elevated railway was constructed pursuant to the provisions of the Rapid Transit Act Chapter 606 of the Laws of 1875 by the procurement of the City of New York and the franchise under which the property herein taken was acquired and possessed by the said claimant was held to be a contract upon consideration—Mayor of The City of New York *v.* Manhattan Ry., Co., 143 N. Y., 1—and a grant of a perpetual right to the unimpaired use and occupation of the streets, avenues and public places constituting the routes of the said elevated railroads.

Subsequent to said grant and the construction of

said railroad the Court of Appeals of this State held that the City of New York did not in fact possess the property in, to and over said streets so granted to induce the provision of the said elevated railway, but that certain rights in and control over the street included within the said grant were in fact vested in the owners of property abutting upon the said elevated railroads, constituted private property within the meaning of the provision of the State Constitution, Article I, Section 6, which prohibits the taking of private property without just compensation. Subsequent to this decision, Story *v.* N. Y. El. Ry. Co., 90 N. Y. 122, the courts of this State have in all instances, upon the application of the abutting owners of said private property in the street enjoined the maintenance of the said elevated railroads unless in the alternative there shall be paid to the owners of said property its full, actual and present value which in every instance has been measured under the decisions of the courts of this State by the difference in the value of the abutting property with and without the railway occupation of the street.

Pursuant to said decision the Manhattan Railway Company, its predecessors in title and this claimant as lessee, have acquired all of the said private property in 42nd Street and Third Avenue so taken by the elevated railway structures therein and at the time of the taking of title by the City herein the Manhattan Railway Company as lessor and this claimant as lessee owned and possessed the said property by virtue of deeds of absolute conveyance of title thereto granted pursuant to court decrees directing conveyance of the said property in the street to the Railway Company upon the payment of the value thereof determined

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502 as aforesaid, by reason of a proceeding condemning a portion of the said property, by voluntary purchase thereof under deeds of conveyance warranting an absolute title thereto or by adverse possession under claim of title thereto granted as aforesaid by The City of New York. Hindley *v.* Manhattan Railway Co., 185 N. Y. 335.

In this proceeding the actual and present value of the said private property in the street known as said easements of light, air and access acquired and possessed as aforesaid by this claimant and its
503 lessor, was proved to be the sum of $3,601,473 in accordance with precisely the same rules of valuation established and enforced by the courts of this State pursuant to which the said claimants acquired the said property as aforesaid. The said sum was the actual and present value of the said real property on the date of taking title thereto by the City and the value thereof to the owners of property abutting upon said 42nd Street, at whose instigation and procurement this proceeding was brought to reacquire said property as well as other private benefits from the removal of the claimant's
504 railway. The said abutting properties while reacquiring the said property and the full value thereof are assessed for only a portion of the amount awarded in this proceeding, and even if the full and actual value of said property determined in accordance with the rules of valuation established and enforced by the courts of this State had been awarded, the owners of said abutting property would have reacquired the said easement in the street at a cost materially less than their value as proved without contradiction in this proceeding, to-wit: $3,601,473. While the nominal title to the said easements is taken in this proceeding by The

City of New York, the right of abutters to the private street easements does not arise out of grant but is implicit in the fiduciary capacity in which the City takes title to the streets. The necessary effect of the taking of the said private property from the claimants herein is to vest it in the abutting owners precisely as it was prior to its acquisition by these claimants. The City did not attempt to controvert the value of the said private easements established in this proceeding as aforesaid, but denied that they had any existence or value whatever, and the court awarded not the admitted value of the said property but the sum of $750,000 based upon original cost rather than present reproductive or exchange value and upon its present use rather than its general availability. 505 506

The said grant from the City of perpetual and unimpaired rights of possession and occupation in 42nd Street and the other streets, avenues and public places constituting the routes of the said Manhattan Railway, included in addition to the said private easements of light, air and access and the operating franchise street rights of perpetual occupation and control (not included in the private easements of light, air and access) which had been held by the Court of Appeals to constitute an interest in and to a certain extent a title to the street in the nature of property. This right of occupation of street space is of great value as determined by the rules of valuation thereof established by and enforced by the City of New York itself and its acquisition and the consequent freeing of the surface of the street for vehicular traffic has greatly benefited and is of enormous value, advantage and profit to the entire area of assessment, as well as to the City of New York. The 507

508 *Objections of Interborough Rapid Transit Co.*

decision of this Court filed April 13, 1926 held that the value of the perpetual right of occupation of the street by the columns and structure of the said spur was inseparable from that of the operating franchise, for which $25,000 only was awarded and no award was made for the said rights of occupation. The other elements of the said award as specified in the said decision consist of $120,438 for the elevated structure in 42nd Street, and the cost of reconstruction, by this claimant, of the station at 42nd Street and Third
509 Avenue, rendered necessary by the taking of the said railway in 42nd Street for which the sum of $80,000 was awarded, the aggregate items of the said award being the sum of $975,438.

The Interborough Rapid Transit Company severally and as lessee of the property taken, makes the following objections to the tentative decree:

1. The said award is inadequate and insufficient in amount and the court erred in awarding the sum of $975,438 for the property taken and should have decided and it was error not to decide
510 that the just compensation was $1,201,931. Representing the following items, to-wit:

(1) $3,601,493, the admitted value of private easements.

(2) $80,000 the damage and loss separately and solely sustained by the claimant Interborough Rapid Transit Company, by reason of the necessity of restoring and replacing the facilities the Third Avenue Line destroyed or impaired by the physical disruption of that line, consequent upon the removal of the 42nd Street spur, being a portion only

of the actual restoration and replacement expenditures forced upon this claimant by the taking herein and in which no other claimant possesses any interest or right whatever. 511

(3) $300,000 representing the value of the street space occupied by the columns, foundations and other structures, the removal of which admittedly enormously increased the vehicular capacity of 42nd Street and which is the basis of the assessment of the entire district from 42nd Street to 50th Street other than the properties immediately abutting upon 42nd Street. 512

(4) $100,000 representing the value of franchises giving perpetual access to the most central and valuable traffic producing district of the City of New York.

(5) $120,438 representing structures taken, the minimum figure in evidence.

2. The said award is based upon incorrect principles of law in that the amount awarded for the said private easements of light, air and access was not based upon the present or reproductive value of the said property or measured by the use to which it was available at the time of valuation, and the court erred in deciding that the value of the said property or any part thereof should be based upon its original cost, the operating value of the railway or by the availability of the said real property solely for railroad purposes and because in reaching the conclusion that the said private easements of light, air and access were worth only $750,000 the court gave more weight to the original cost than reproduction cost on the ground stated in its decision that the value of the railroad had 513

514 not kept pace with the value of the abutting property, and the court should have decided and it was error not to decide that the said real property to-wit: the private easements of light, air and access must be valued as any other property and pursuant to the principles of law prescribed and enforced by the courts in respect of the acquisition of the same property by the said claimants without exception and in thousands of instances and upon the basis of which similar property has universally been purchased and sold as well by this
515 claimant as by others, to-wit: the decreased or increased value of abutting property resulting from the loss or acquisition of the said street easements, and the court erred in deciding that the railway company did not acquire and own the said rights in and control over the street denominated easements of light, air and access, as fully and to the same extent as the owners of the abutting property from whom the said property was acquired by the railroad companies and was not entitled to the full, actual and present value of the said property but only to a value determined and limited by the uses
516 to which it might be devoted at the time of its taking.

The court erred in holding that the property in and right of control over the street constituting the said private easements of light, air and access acquired by the said claimants or their predecessors by conveyance and covenant of absolute title thereto, whether voluntary or pursuant to judicial direction were limited to a railway user notwithstanding the terms of said grants, and in holding that the value of said property ceased by reason of the claimant's acquisition thereof to be measurable as real property or an interest therein available for

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other than railway uses and became dependent upon and limited to its value for railway purposes only. The court, therefore, should have decided and it was error not to decide that the said easements of light, air and access were worth the sum of $3,601,473, their undisputed value for the purposes for which they were immediately available.

The court erred in holding that the property taken constituting the permanent rights of occupation in the street other than the said private easements of light, air and access had no value apart from the franchise right of operation, and that the 518
value of said property or of any other property taken herein other than the operating franchise itself should be measured or limited by the value of said franchises or right to operate the said property.

The court, therefore, should have decided and it was error not to decide that the value of the right to the permanent physical occupation of 42nd Street and the bed thereof by the said columns, foundation and structure of the said railway other than the said private easements was $300,000.

3. The property is taken and the award is made 519
in violation of the provisions of

(a) Article 1, Section 6 of the Constitution of the State of New York, which provides that private property shall not be taken for public use without just compensation;

(b) Article 1, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts and

(c) The Fourteenth Amendment to the Constitu-

520 tion of the United States, Section 1 thereof, which provides that no State shall deprive any person of life, liberty or property without due process of law, in that the Statutes authorizing this proceeding, the amount awarded in the tentative decree for the property taken in this proceeding and the rule of law adopted by this Court in respect thereto impair the obligation of contracts, to-wit: the deeds of conveyance and the title by prescription to the said easements acquired under claim of right and title thereto under grant from the City aforesaid
521 for full and adequate consideration, under which the claimants acquired and possessed the property taken in this proceeding, and in that the amount awarded in the tentative decree for the property taken in this proceeding does not constitute just compensation for the property so taken and that the proceedings herein and the fact and the amount of said award do not constitute due process of law; and this claimant hereby draws in question the constitutionality of said award and of said decree and of all provisions thereof and/or of statutes or of law assumed or asserted to
522 authorize the said award and the enforcement thereof.

The said claimants acquired the said easements or private rights of control in, over and to the said 42nd Street, subsequent to the decision in

Story v. *New York Elevated R. R. Co.*, 90 N. Y. 122;

Lahr v. *Met. R. R. Co.* 104 N. Y. 268; and other cases constituting a rule of property.

Muhlker v. *Harlem Ry. Co.*, 197 U. S. 544, establishing and guaranteeing that the said private easements of light, air and access constituted

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property within the protection of constitutional provisions against the taking of private property without just compensation, and rendering said property inviolable as against attempted appropriation under legislative sanction for any purpose or to any extent whatever, without full, adequate and just compensation.

The City of New York as well as the courts of this State have uniformly recognized, adopted and enforced as a rule of property the principle that the said property constituting private rights in the street space denominated easements of light, air 524
and access acquired and possesed by the said claimants in perpetuity as aforesaid must be acquired, valued and taxed upon the basis of their present full, adequate and exchange value in the same manner and to the same extent as any other form of real property or interest therein and that the "acquisition of these easements, it is true, destroys in a measure the value of the abutting property but to the extent that such value is destroyed that of the railroad company is increased."

People ex rel. Man. Ry. Co. v. *Barker*, 165 N. Y. 305, 316, and this principle of valuation has been 525
uniformly applied in a series of decisions unprecedented in its magnitude in the history of the courts of this State,

Hindly v. *Man. Ry. Co.*, 185 N. Y. 335,

whether the said property has been possessed by abutting owners or the claimants themselves and whether it has been devoted to railway purposes or otherwise.

4. The property is taken and the award is made in violation of the statutes Chap. 788 of the Laws of 1917, Chap. 511 of the Laws of 1919 and Chap.

526 635 of the Laws of 1923, providing that just compensation shall be awarded for the property taken.

Chap. 788 of the Laws of 1917 of which Chap. 611 of the Laws of 1919 and Chap. 635 of the Laws of 1923 were amendatory was permissive and authorized the removal of the said railway and the disposition of the property of the claimants by negotiation. This claimant upon voluntary discontinuance of portions of its railroad had as is undisputed in the record sold and conveyed similar easements to the owner of abutting property and

527 by the purchase of abutting properties has realized or acquired the full adequate and market value of the said easements measured by the cost to acquire similar property at the time of taking, the rule of valuation established and prescribed by the Courts of this State, as aforesaid, and the taking of said real property and the award herein is in violation of the principles of law under which the value of real property taken for public use has uniformly and without exception been determined whether such property was at the time of taking devoted to railway or any other purposes whatever, to-wit, its

528 actual exchange and present value and that the constitutional prohibition against the taking of private property without just compensation is as applicable as when the same property was taken and acquired for full and just compensation by these claimants (*Story* v. *N. Y. El. R. R. Co., supra*).

5. The court should have decided and it was error not to decide that the portion of the sum expended by this claimant in reconstructing the Third Avenue line and the station thereof at Third Avenue and 42nd Street, necessitated by the taking of the said spur, and amounting as found by the court, to $80,000, should be awarded to the claim-

ant Manhattan Railway Company, subject to the said lease and to the mortgages specified in the tentative decree, the decision having established that the said sum of $80,000 was an element of damage inflicted solely upon this claimant as the operator of the property and represented only that part of its expenditures necessitated by the disruption of the property which did not constitute any part of the property taken or additional value to the part not taken, and the said item of damage to this claimant was therefore not intended to be included in the agreement made in open court that the claimants Manhattan Railway Company and Interborough Rapid Transit Company would endeavor to effect an apportionment of the award in which they possessed a joint interest.

The Court should therefore increase the total award from $975,438 to $4,201,911, of which amount the sum of $80,000 should be severally awarded to the claimant Interborough Rapid Transit Company.

Wherefore the Interborough Rapid Transit Company severally and as lessee of the property taken, a claimant in this proceeding, prays that it may be granted a hearing on its objections and that the Court may correct and alter the decree and for such other and further relief as may be proper.

James L. Quackenbush, Attorney for Claimant, Office and Post Office Address, 165 Broadway, Borough of Manhattan, New York City.

State of New York, County of New York, ss.:

H. M. Fisher, being duly sworn, deposes and says: That he is Secretary of the Interborough Rapid Transit Company, claimant herein; that he

532 has read the foregoing objections and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That the reason why said objection is not verified by said claimant is that said claimant is a domestic corporation; that deponent has derived his knowledge of the facts above set forth from employees, agents and officers of said claimant, and from information acquired by him in the performance of his duties as Secretary as aforesaid.

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H. M. Fisher.

Sworn to before me, this 2nd day of May, 1927.

J. C. Norris, Notary Public, Nassau County. Certificate Filed in New York County No. 165; N. Y. County Register's Office No. 9111. Term Expires March 30, 1929.

Objections of Equitable Trust Co. of N. Y. to Tentative Decree.

Supreme Court, New York County, Extraordi-

534 nary Special Term.

[Same Title]

Objections of the Equitable Trust Company of New York, as Trustee under the second mortgage of Manhattan Railway Company dated June 1, 1913, to the tentative decree.

The Equitable Trust Company of New York, whose address is 37 Wall Street, New York City, is the Trustee under a Deed of Trust by the Manhattan Railway Company to The Equitable Trust Company of New York dated June 1, 1913, the

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lien of which covers the property taken in condemnation in the above entitled proceeding. At the time the property was taken, bonds of Manhattan Railway Company secured by the lien of the Second Mortgage on the property taken were issued and outstanding in the hands of the public, and are now outstanding, in the amount of $4,523,000 principal amount. The property taken is the elevated railway which was on East 42nd Street in the Borough of Manhattan (including the franchise to construct and operate an elevated railroad on East 42nd Street, the easements of light, air and access in the street where the railroad stood and the railroad structure in the street) which constituted that part of the Third Avenue railway line owned by the Manhattan Railway Company which extended from Third Avenue, on East 42nd Street, to Park Avenue; the property taken is described in detail in the statute authorizing the condemnation and in the petition of The City of New York by which this proceeding was instituted.

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In 1903 the Manhattan Railway Company leased its elevated railway system in the Boroughs of Manhattan and The Bronx, including as part of the Third Avenue line thereof the property taken in this proceeding, to the Interborough Rapid Transit Company as lessee for a period of 999 years from November 1, 1875. At the time the present proceeding was begun and the property taken, the Interborough Rapid Transit Company was in possession of the property so leased, including the property taken in this proceeding. The property when taken was subject to the lien of the Consolidated Mortgage of the Manhattan Railway Company to Central Union Trust Company

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538 as Trustee, dated February 26, 1890, and to the lien of the Second Mortgage of the Manhattan Railway Company to The Equitable Trust Company of New York as Trustee, dated June 1, 1913.

The proceeding was instituted under a special statute (Chapter 635 of the Laws of 1923) at an Extraordinary Special Term of the Supreme Court without a jury. The Equitable Trust Company of New York, as Trustee under the Second Mortgage of Manhattan Railway Company dated June 1, 1913, duly filed its verified claim in this
539 proceeding. Claims were filed also by three other claimants, namely, The Manhattan Railway Company as owner and lessor of the property taken, the Interborough Rapid Transit Company as lessee, and the Central Union Trust Company as Trustee of the Consolidated Mortgage of the Manhattan Railway Company securing certain of its outstanding bonds.

After hearing the testimony the Court caused a tentative decree to be filed on the 11th day of April, 1927, in the office of the Clerk of the County of New York, and notice of the filing thereof was published in the City Record on April 11, 1927.
540 The tentative decree contained an award of $975,438 as compensation for the property taken. The Court filed an opinion in April, 1926, in which it set forth the principles of law on which it made the award. The Court did not allocate the amount awarded as compensation among the respective claimants as these claimants had stipulated in open court that they would first undertake to allocate the award without the assistance of the Court.

The Equitable Trust Company of New York, as Trustee under the Second Mortgage of Manhattan Railway Company dated June 1, 1913, the lien

of which covered the property taken, a claimant in this proceeding, makes the following objections to the tentative decree: 541

1. The property is taken and the award is made in violation of the provisions of

(a) Article 1, Section 6 of the Constitution of the State of New York which provides that private property shall not be taken for public use without just compensation;

(b) Article 1, Section 10 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts; and 542

(c) The Fourteenth Amendment to the Constitution of the United States, Section 1 thereof, which provides that no State shall deprive any person of life, liberty or property without due process of law,

in that the statute authorizing this proceeding, the amount awarded in the tentative decree for the property taken in this proceeding and the rule of law adopted by this Court in respect thereto impair the obligation of contracts, to wit, the deeds 543 of conveyance and the title by prescription under which the claimant held property taken in this proceeding, and in that the amount awarded in the tentative decree for the property taken in this proceeding does not constitute just compensation for the property so taken and that the proceedings herein and the fact and the amount of said award do not constitute due process of law; and this claimant hereby draws in question the constitutionality of said award and of said decree and of all provisions thereof and/or of statutes or of law

544 *Objections of Equitable Trust Co.*

assumed or asserted to authorize the said award and the enforcement thereof.

2. The property is taken and the award is made in violation of

(a) the Statute (Laws of New York, 1923, Chapter 635) under which this proceeding is conducted which provides, among other things, that just compensation shall be awarded for the property taken;

(b) the principles of law under which compen-
545 sation for private property taken for public use is to be determined, and particularly compensation for property of the kind taken in this proceeding.

in that the amount awarded in the tentative decree for the property taken in this proceeding does not constitute just compensation for the property so taken.

3. The Court erred in determining the value of the easements of light, air and access, or of the property right therein, so taken, and in determin-
546 ing the value of the franchise so taken, and the Court thus erred in determining the compensation for the property taken.

The Court determined the compensation for the property taken by ascertaining (1) the value of the easements of light, air and access, or the property right of the railroad company therein, so taken; (2) the value of the franchise to construct and operate the elevated railroad in East 42nd Street; and (3) the value of the physical railroad structure erected in East 42nd Street under the franchise.

But the Court erred in determining the extent of the property right of the claimant in the ease-

ments of light, air and access in East 42nd Street and the value of such property right in the easements, and in determining the value of the franchise, and thus erred in determining the compensation for the property taken. The Court recognized that under the laws of this State the easements of light, air and access are private property in the bed of the street and that notwithstanding the franchise granted by the City and the State to the railroad company authorizing it to construct its railroad in the street in the manner in which it was actually constructed and to operate the railroad in perpetuity in the manner in which it was operated, the construction and operation of the railroad in East 42nd Street were an invasion of the private property rights in the street of the owners of the property abutting on the street and that the construction and operation of the railroad were a taking of such private property for public use; that the abutters had the legal right, unless just compensation was paid for the property right in the street thus taken by the railroad company, to have the operation of the trains over the elevated railroad in East 42nd Street restrained by injunction; and the Court further recognized that the railroad company, in order to complete the right to have its railroad in the street, paid to the abutters the value of these easements of light, air and access (except the easements which the railroad company acquired by prescription), and the abutters made voluntary conveyances of the easements to the railroad company; but the Court erred in deciding that the railroad company acquired only the right to impair the easements of light, air and access and to keep them impaired in perpetuity, which decision is based on the

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550 erroneous principle asserted by the Court that as the railroad company did not own the abutting property it could not own the easements of light, air and access or any part thereof or any property right therein. The Court should have decided, and it was error not to decide, that under the laws of this State the railroad company as the owner of the franchise and the property right in the street created under the franchise, could own easements of light, air and access, the ownership of which was necessary to complete its right to construct
551 and operate its railroad, even although the railroad company did not own property abutting on the street, and that as the railroad company had paid the full value of the easements (except as to the easements acquired by prescription) and the abutting property owners had made voluntary conveyances of such easements, the railroad company did acquire and did own the easements of light, air and access so conveyed to it, or a part thereof or a property right therein. The Court should also have decided, and it was error not to decide, that in accordance with the decision of the
552 Court of Appeals of this State the railroad company acquired by prescription certain easements of light, air and access on East 42nd Street by entering into possession thereof by the construction of the railroad under color of title evidenced by the franchise and by possessing the easements for twenty years through the operation of the railroad.

The Court erred in determining the value of the easements or property right in the easements taken from the railroad company in this proceeding to be $750,000, as the value of the railroad company's interest in the easements, whether the railroad company acquired the ownership of the easements

or a part thereof or a property right therein, or acquired merely the right to impair the easements and to keep them impaired in perpetuity, was at least $3,600,000. The Court erroneously decided that the value of the easements or property right in the easements taken from the railroad company in this proceeding must be determined by a consideration of such elements taken together as the original cost to the railroad company of such easements or property right therein, the cost to replace such easements or property right therein at the time they were taken from the railroad company, the depreciation, the earning power of the property taken and that more weight must be given to the original cost than to the cost of reproduction, for the reason that in the Court's judgment the value of the railroad had not kept pace with the value of the abutting property.

The Court should have decided, and it was error not to decide, that the easements of light, air and access are a species of real property and the value of real property is always ascertained by the Courts, whether in condemnation or for rate making, by the cost to acquire similar adjacent real property on the day of valuation, and the Court erred by failing to decide that the value of the easements or the interest therein taken in this proceeding should be determined by the cost to acquire similar easements or an interest therein at the time the property was taken in this proceeding.

The Court should have decided, and it was error not to decide, that the principls of law by which the value of the easements or an interest therein must be determined were established by the Court of Appeals of this State at the time the railroad

556 company took the easements from the owners of the abutting property and the value thereof is the difference in the value of the abutting property, with and without the easements. Under these established principles of law, the value of the easements is the amount which it would be necessary to pay to acquire the particular easements or similar easements at the time the valuation is to be made. The decrease in the value of the abutting property caused by the taking of the easements or the increase in the value of the abutting property
557 caused by the restoration of such easements measures the value of the easements. The testimony showed the actual increase in the value of the abutting properties caused by the taking of the easements by the city in this proceeding; while the easements were taken from the railroad company and not from the owners of the abutting property, the city assessed upon the parties benefited, who are principally the owners of the abutting property, the amount which should be awarded as compensation for the taking of the property, and this caused the same increase in the value of the abut-
558 ting properties as if the owners of the abutting properties had actually reacquired the easements. The Court should have decided, and it was error not to decide, that the value of the easements or interest in the easements taken in this proceeding is measured by the actual increase in the value of the abutting property caused by the taking of such easements or interest therein. The Court should have decided, and it was error not to decide, that the value of the easements or interest in the easements taken in this proceeding is $3,600,000, as the claimants offered evidence which showed that if this right were to be acquired on the day when

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title vested in the city it would have cost the sum of $3,600,000, and the city did not attempt to controvert this proof.

The Court erred in determining that the value of the franchise was $25,000 and in failing to determine that its value was at least $300,000, and thus erred in determining just compensation for the property taken. The Court recognized that under the laws of this State the franchise to construct and operate an elevated railroad in the street created an interest in the street of the nature of real property, which interest the Court regarded as a public easement, but the Court erroneously decided that the value of the franchise could not be determined through the value of this interest in the street, although the city had in practice established rules for determining the value of such an interest, and the Court erroneously decided that the value of the franchise must be determined by a consideration of the present and prospective earning power of the property taken and of the value of the interest in the street created by the franchise.

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The Court erred in deciding that the just compensation for the property taken was $975,438 and should have decided, and it was error not to decide, that the just compensation was $4,100,438.

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The Court should, therefore, make the following corrections and alterations in the tentative decree as to the award of compensation for the property taken:

It should increase the award from $975,438 to $4,100,438.

Wherefore, The Equitable Trust Company of New York, as Trustee under the Second Mortgage

562 *Objections of Equitable Trust Co.*

of Manhattan Railway Company dated June 1, 1913, the lien of which covers the property taken, a claimant in this proceeding, objecting to the tentative decree, prays that it may be granted a hearing on its objections and that the Court may correct and alter the decree, and for such other and further relief as may be proper.

George Welwood Murray, Attorney for The Equitable Trust Company of New York, as Trustee under the Second Mortgage of Manhattan Railway Company, Office and Post Office Address, 37
563 Wall Street, Borough of Manhattan, City of New York.

State of New York, County of New York, ss.:

George Welwood Murray, being duly sworn, deposes and says that he is a member of the firm of Murray, Aldrich & Roberts and as such is familiar with the facts and circumstances in the within proceeding; that he has read the foregoing objections and the same are true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those
564 matters he believes them to be true; that the sources of deponent's information and the grounds of his belief are the records of the above proceedings.

George Welwood Murray.

Sworn to before me this 2nd day of May, 1927.

Zelma Roberts, Notary Public Westchester County of N. Y. Co. Clks No. 598, Reg. No. 8408. Commission expires March 30, 1928.

Objections of Bowman Biltmore Hotels Corporation (Hotel Commodore) et al. to Tentative Decree. 565

Supreme Court, New York County.

[SAME TITLE]

To the Honorable Supreme Court of the State of New York.

Bowman Biltmore Hotels Corporation whose post office address is 33 East 43d Street, Borough of Manhattan, New York City, being the lessee, and liable for a portion of the assessment herein, of the real property (location of Hotel Commodore) 566 situated in the Borough of Manhattan, and described as follows:

Lot Number	Block Number	Map Number	Amount
30	1280	14	$156,339.84

against which property a tentative assessment, in the above stated amount, has been levied in these proceedings, appearing by Page & Page, attorneys, hereby objects to the tentative decree herein and the award and assessments thereof and for its objections (without waiving any other objections) respectfully presents, upon information and belief the following: 567

(1) That the amount of the assessment proposed to be levied on the premises of your objector exceeds the value of the benefit and advantages derived by said premises by reason of this proceeding.

(2) That the award of said tentative decree and the assessments based thereon are excessive, contrary to the evidence and contrary to law.

(3) That the objections to said tentative decree and the award and assessments filed or to be filed

herein by the City of New York, are hereby referred to and made part hereof as if herein set forth at length, as objections also presented on part of the undersigned objector.

(4) That said Award should be vacated and said assessments cancelled and set aside in whole or in part.

Wherefore, the objector requests an opportunity to be heard in support of said objections.

Dated, New York, April 27, 1927.

Page & Page, Attorneys for Objector, Bowman-Biltmore Hotels Corp. (Hotel Commodore), Office & Post Office Address, 55 Liberty Street, Borough of Manhattan, City of New York.

State of New York, County of New York, ss.:

John McE. Bowman, being duly sworn, says: That he is President of Bowman-Biltmore Hotels Corporation the objector herein, a domestic corporation, and that he has read the foregoing objections and knows the contents thereof; that the same are true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

John McE. Bowman.

Sworn to before me this 27th day of April, 1927.

Ruth H. Goffe, Notary Public, New York County, County Clerk's No. 536, Reg. No. 8015, Term expires March 30, 1928. (Notarial Seal.)

Objections of Various Owners and Lessees.

571

The following persons and parties as owners or lessees assessed in this proceeding, represented by Messrs. Page and Page, their attorneys, filed written and duly verified objections to the award made herein in the same form as the objections of Bowman Biltmore Hotels Corporation (Hotel Commodore) printed at pages 189 and 190 of the record:

Objectors	Lot No.	Block No.	Map No.	Amount
Corn Exchange Bank	31	1297	21	$28,414.59
	6	1277	4	2,268.32
	7	1277	5	1,886.92
	67½	1277	1859A	63.00
B. L. M. Bates Corporation (Hotel Belmont)	33	1276	54	19,621.70
Bates-Bowman Corporation (Murray Hill Hotel)	27	1275	509	2,211.21
Guaranty Trust Co. of New York as substituted Trustee of the Estate of John Curry, Deceased	49	1315	66	5,124.14
J. Chr. G. Hupfel Co., Inc.	50	918	1159	42.85
	48	"	1160	56.45
	47	"	1161	36.29
	46	"	1162	36.29
	45	"	1163	40.32
	11	919	245	44.43
	12	"	246	40.08
	14	"	248	40.08
	15	"	249	40.08
	16	"	231	497.70
	47	"	226	51.89
	46	"	227	84.65
	44	"	228	53.33
	43	"	229	53.33
	42	"	230	62.21
Bowman Biltmore Hotels Corp. (Hotel Biltmore)	20	1278	1854	2,950.35
The Bowery Savings Bank	63	1296	56	59,177.88
	61	1296	57	27,959.29
Rogers Peet Company	1	1276	43	5,599.73
Princetpn Club of New York	33	869	537	71.10
Fritz G. Schmidt	11	1277	8	2,506.97
Office Realty Corporation	8	1277	6	6,510.54
	66	1277	1860	419.26
William Volk	44	1296	61	23,299.39
	37	1296	65	4,112.19

572

573

574 *Objections of Various Owners and Lessees.*

202-204 East 42nd Street Corporation	48	1315	66a	1,658.58
Vanderbilt Avenue Building Corporation	27	1277	12	9,707.00
Centerminal Corporation	41	1315	70	1,466.11
	40	"	71	1,356.39
	39	"	72	1,323.59
	38	"	73	1,306.68
	37	"	74	1,287.58
	36	"	77	1,822.24
	35	"	78	1,171.37
	34	"	79	1,124.52
	33	"	80	1,077.66
	13	"	93	134.56
	19	"	91	577.68
	14	"	92	151.08
575 F. & S. Rockaway Restaurant, Inc.	32½	1297	23	14,667.08
Julius Tishman & Sons, Inc.	23	1298	1957	158.95
	25	1298	1959	120.46
	49	1298	1947	101.20
Frederick Brown	42	1276	53	25,183.39
James B. Ford	4	1277	1	1,017.24
Anahma Realty Corporation	51	1276	51	15,883.48
D. A. Schulte, Inc.	36	1297	22	1,302.02
	33	1297	26	22,737.75
The Oceanic Investing Company	69	1276	41	8,413.07
	68	1277	1858	72.29
	67	1277	1859	117.72
	69	1281	1794	45.76
	72	1281	1797	54.00
	6	1277	4	2,268.32
	7	1277	5	1,886.92
576	67½	1277	1859a	63.00
Borden Realty Corporation	58	1279	1833	73.29
	57	1279	1834	116.75
	59	1279	1830	352.40
	17½	1279	1835	94.05
The R-W Realty Company, Inc.	62	1276	48	2,498.47
Trustees of the Estate of James Kelley, deceased	1	1316	29	4,578.50
	3	1316	28	1,139.36
Childs Company	66	1276	44	2,328.27
	65	1276	45	2,371.67
	3	865	693	39.20
J. Chr. G. Hupfel	55	892	1047	31.60
J. Homer Cudmore	51	919	222	47.40
Alex Taylor & Co., Inc.	64	1276	46	2,413.92
Henry Hof	18	1316	34	3,382.02
	31	1316	2143	451.80
140 East 27th Street Corporation	23	1316	40	2,107.37
Carbide & Carbon Realty Co., Inc.	58	1276	49	17,751.01

Supplemental and Additional Objections of Bowman Biltmore Hotels Corporation (Hotel Commodore) et al. to Tentative Decree. 577

Supreme Court, New York County.

[SAME TITLE]

To the Honorable Supreme Court of the State of New York.

Bowman Biltmore Hotels Corporation (Hotel Commodore); Corn Exchange Bank; Bowman Biltmore Hotels Corporation (Hotel Biltmore); B. L. 578
M. Bates Corporation (Hotel Belmont); Bates Bowman Corporation (Murray Hill Hotel); Guaranty Trust Company of New York as substituted Trustee of the Est. of John Curry, deceased; J. Chr. G. Hupfel Co., Inc.; The Bowery Savings Bank; Rogers Peet Company, Princeton Club of N. Y.; Fritz G. Schmidt; Office Realty Corporation; William Volk; 202-204 East 42nd Street Corporation; Vanderbilt Avenue Building Corporation; Centerminal Corporation; F. & S. Rockaway Restaurant, Inc.; Julius Tishman & Sons, Inc.; Frederick Brown; James B. Ford; Anahma Realty Cor- 579
poration; D. A. Schulte, Inc.; The Oceanic Investing Company; Borden Realty Corporation; R-W Realty Company, Inc.; The Trustees of the Est. of James Kelley, deceased; Childs Company; J. Chr. G. Hupfel; J. Homer Cudmore; Alexander Taylor & Co., Inc.; Henry Hoff; 140 East 27th St. Corp.; Carbide & Carbon Realty Co., Inc., against whose properties tentative assessments have been levied in these proceedings as specified in Schedule "A" hereto annexed and hereby made part hereof, appearing by Page & Page, attorneys, hereby object

580 *Supp. Objections of Bowman Biltmore Hotels Corp.*

to the tentative decree herein and the award and assessments thereof made by this Court on April 4, 1927, and for their objections (without waiving and hereby renewing the objections as heretofore respectively and severally filed by them herein), respectfully present, upon information and belief, the following:

That said award is contrary to law for the further and additional reason that the claimants, The Manhattan Elevated Railway Company and the Interborough Rapid Transit Company, as lessee, are
581 entitled to no compensation for the so-called private easements of light, air and access nor for the franchise to construct, maintain and operate the Elevated Spur in East 42nd Street, because the said private easements and franchise were acquired under the provisions of the Rapid Transit Act of 1875 and subsequent legislation which provided and contemplated that the life of the said easements and franchise should continue only so long as the operation of said Elevated Spur might be found to be a matter of public necessity and convenience. That the said easements and fran-
582 chise on 42nd Street between Park and Third Avenues were terminated by the finding and decision of the Public Service Commission for the First District on or about the 22nd day of April, 1921, and the proceedings taken herein by the City of New York which resulted in title to said Spur vesting in said City on December 7, 1923, after which date there were no longer any easements and franchises belonging to the Claimants in said East 42nd Street.

Wherefore, the objectors request an opportunity to be heard in support of said objections.

Dated, New York, October 24, 1927.

Page & Page, Attorneys for Objectors above named, Office & Post Office Address, 55 Liberty Street, Borough of Manhattan, City of New York.

State of New York, County of New York, ss.:

William H. Page, being duly sworn, deposes and says: That he is one of the attorneys for the objectors above named herein; that he has read the 584
foregoing objections and knows the contents thereof, and that the same are true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true. These objections are verified by deponent and not by objectors for the reason that all the material allegations are entirely matters of record within the personal knowledge of deponent and that the grounds of his belief as to all matters not stated upon his knowledge, are information from such records.

William H. Page 585

Sworn to before me this 24th day of October, 1927.

Francis J. Parks, Notary Public, Nassau County; Certificate filed in New York Co.; New York County Clks. No. 442; New York County Reg. No. 8309. Commission expires March 30, 1928.

To: Clerk of the County of New York. Corporation Counsel of the City of New York, Municipal Building, New York, N. Y.

586 **Schedule "A"—Attached to Supplemental and Additional Objections of Bowman Biltmore Hotels Corporation (Hotel Commodore), et al. to Tentative Decree.**

	Objectors	Lot No.	Block No.	Map No.	Amount
	Bowman Biltmore Hotels Corp. (Hotel Commodore)	30	1280	14	$156,339.84
	Corn Exchange Bank	31	1297	21	28,414.59
		6	1277	4	2,268.32
		7	1277	5	1,886.92
		67½	1277	1859A	63.00
	B. L. M. Bates Corporation (Hotel Belmont)	33	1278	54	19,621.70
	Bates-Bowman Corporation (Murray Hill Hotel)	27	1275	509	2,211.21
587	Guaranty Trust Co. of New York, as substituted Trustee of the Estate of John Curry, Deceased	49	1315	66	5,124.14
	J. Chr. G. Hupfel Co., Inc.	50	918	1159	42.85
		48	"	1160	56.45
		47	"	1161	36.29
		46	"	1162	36.29
		45	"	1163	40.32
		11	919	245	44.43
		12	"	246	40.08
		14	"	248	40.08
		15	"	249	40.08
		16	"	231	497.70
		47	"	226	51.89
		46	"	227	84.65
		44	"	228	53.33
588		43	"	229	53.33
		42	"	230	62.21
	Bowman-Biltmore Hotels Corp. (Hotel Biltmore)	20	1278	1854	2,950.35
	The Bowery Savings Bank	63	1296	56	59,177.88
		61	1296	57	27,959.29
	Rogers Peet Company	1	1276	43	5,599.73
	Princeton Club of New York	33	869	537	71.10
	Fritz G. Schmidt	11	1277	8	2,506.97
	Office Realty Corporation	8	1277	6	6,510.54
		66	1277	1860	419.26
	William Volk	44	1296	61	23,299.39
		37	1296	65	4,112.19
	202-204 East 42nd Street Corp.	48	1315	66a	1,658.58
	Vanderbilt Avenue Building Corp.	27	1277	12	9,707.00

Schedule A.

Centerminal Corporation	41	1315	70	1,466.11	
	40	"	71	1,356.39	
	39	"	72	1,323.59	
	38	"	73	1,306.68	
	37	"	74	1,287.58	
	36	"	77	1,822.24	
	35	"	78	1,171.37	
	34	"	79	1,124.52	
	33	"	80	1,077.66	
	13	"	93	134.56	
	19	"	91	577.68	
	14	"	92	151.08	
F. & S. Rockaway Restaurant, Inc.	32½	1297	23	14,667.08	
Julius Tishman & Sons, Inc.	23	1298	1957	158.95	
	25	1298	1959	120.46	590
	49	1298	1947	101.20	
Frederick Brown	42	1276	53	25,183.39	
James B. Ford	4	1277	1	1,017.24	
Anahma Realty Corporation	51	1276	51	15,883.48	
D. A. Schulte, Inc.	36	1297	22	1,302.02	
	33	1297	26	22,737.75	
The Oceanic Investing Company	69	1276	41	8,413.07	
	68	1277	1858	72.29	
	67	1277	1859	117.72	
	69	1281	1794	45.76	
	72	1281	1797	54.00	
	6	1277	4	2,268.32	
	7	1277	5	1,886.92	
	67½	1277	1859a	63.00	
Borden Realty Corporation	58	1279	1833	73.29	
	57	1279	1834	116.75	591
	59	1279	1830	352.40	
	17½	1279	1835	94.05	
The R-W Realty Company, Inc.	62	1276	48	2,498.47	
Trustees of the Estate of James Kelley, Deceased	1	1316	29	4,578.50	
	3	1316	28	1,139.36	
Childs Company	66	1276	44	2,328.27	
	65	1276	45	2,371.67	
	3	865	693	39.20	
J. Chr. G. Hupfel	55	892	1047	31.60	
J. Homer Cudmore	51	919	222	47.40	
Alex Taylor & Co., Inc.	64	1276	46	2,413.92	
Henry Hof	18	1316	34	3,382.02	
	31	1316	2143	451.80	
140 East 27th Street Corp.	23	1316	40	2,107.37	
Carbide & Carbon Realty Co., Inc.	58	1276	49	17,751.01	

592 **Objections of N. Y. Central R. R. Co. et al. to Tentative Decree.**

Supreme Court, New York County.

[SAME TITLE]

The New York Central Railroad Company, the New York and Harlem Railroad Company and the New York State Realty and Terminal Company, whose post office addresses are, respectively, No. 466 Lexington Avenue, Borough of Manhattan, City of New York, for their and each of their objec-
593 tions to the tentative decree herein respectively show to the court and allege:

First: The New York Central Railroad Company is a railroad corporation duly organized and existing under the laws of the State of New York and is the lessee of that portion of the railroad, lands and properties of the New York and Harlem Railroad Company, a corporation organized and incorporated under Chapter 263 of the Laws of 1831, extending from 42nd Street in the Borough of Manhattan, City of New York to Chatham Four Corners.

594 Second: The New York Central Railroad Company is the owner in fee of the real property designated, described and assessed herein as follows:

595

Block	Lot	Map No.	Amount
1277	27	12	$9,707.00
1278	20	1854	2,950.35
1284	26	1447	224.37
1279	28	1839	464.27
1279	45	1837	354.91
1280	60	1873	4,869.95
1280	90	1872	2,689.20
1284	30	1451	192.80
1300	1	1871	2,004.75
1301	1	1461	417.73
1301	6	1462	883.65
1303	1	1459	1,301.38
1304	1	1458	1,301.38

596

And is also the owner in fee of certain portions of the real property designated, described and assessed herein as follows:

Easterly 50 foot strip (formerly Depew Place) of—

Block	Lot	Map No.	Amount
1280	1	13	$79,453.76

Also, northerly 7.5 foot strip of—

Block	Lot	Map No.	Amount
1280	30	14	$156,339.84

597

Also, two parcels of land, one 75'5" on Madison Avenue and 100 feet on East 47th Street, and the other adjacent thereto on the east having 50 feet on East 47th Street and a depth of 100'5" in—

Block	Lot	Map No.	Amount
1283	21	1453	$693.01

Also, the northerly one-half of—

Block	Lot	Map No.	Amount
1284	33	1452	$399.41

598 *Objections of N. Y. Central R. R. Co.*

Third: The New York and Harlem Railroad Company is the owner and lessor and The New York Central Railroad Company is the lessee of the real property designated, described and assessed herein as follows:

Block	Lot	Map No.	Amount
1281	21	1869	$222.75
1281	24	1870	1,737.00
1282	21	1456	1,285.31
1283	30	1454	192.80
1283	34	1455	399.41
1302	1	1460	1,301.38

599

And the said New York and Harlem Railroad Company is also the owner and lessor and The New York Central Railroad Company is the lessee of certain portions of the real property designated, described and assessed herein as follows:

Block	Lot	Map No.	Amount
1280	1	13	$79,453.76

except said strip of land 50 feet wide (formerly Depew Place) along the easterly side thereof, which is owned by The New York Central Railroad Company, as aforesaid. Also—

600

Block	Lot	Map No.	Amount
1283	21	1453	$693.01

except the portion thereof owned by The New York Central Railroad Company, as aforesaid. Also, the southerly one-half of—

Block	Lot	Map No.	Amount
1284	33	1452	$399.41

Fourth: The New York State Realty and Terminal Company is a domestic corporation and is

601

the owner in fee of the real property designated, described and assessed herein as follows:

Block	Lot	Map No.	Amount
1280	30	14	$156,339.84

except said strip of land 7.5 feet wide along the northerly side thereof, which is owned by The New York Central Railroad Company, as aforesaid. Also—

Block	Lot	Map No.	Amount
1285	36	1435	$449.96

602

Fifth: That the award made by the court for the property acquired herein and designated in the tentative decree (signed on the 8th day of April, 1927, and filed with the Clerk of the County of New York on the 11th day of April, 1927), as damage parcel No. 1, is based upon an erroneous theory and is excessive, contrary to the evidence and contrary to law.

Sixth: That the amount of the assessments proposed to be levied on the real property of your objectors, respectively, as aforesaid, exceeds the value of the benefits and advantages derived by said real property from the improvements for which said assessments are levied.

603

Seventh: That the award of said tentative decree and the assessments based thereon are excessive, contrary to the evidence and contrary to law.

Eighth: That the said proposed assessments are inequitable and unjust and deprive your objectors of their and each of their property without due process of law in violation of Article I, Section 6 of the Constitution of the State of New York, and of the Fourteeenth Amendment to the Constitution of the United States.

604 *Objections of N. Y. Central R. R. Co.*

Wherefore, the undersigned objectors demand that said award should be vacated and said assessments cancelled and set aside in whole or in part.

Dated, New York, April 29, 1927.

The New York Central Railroad Company, By (sgd) E. L. Rossiter, Treasurer.

New York and Harlem Railroad Company, By (sgd) H. G. Snelling, Treasurer.

New York State Realty and Terminal Company, By (sgd) H. G. Snelling, Treasurer.

605 Alex. S. Lyman, Attorney for the above named objectors, Office & P. O. Address, Room 1146, 466 Lexington Ave., Borough of Manhattan, New York City, N. Y.

State of New York, County of New York, ss.:

E. L. Rossiter being duly sworn, deposes and says: that he is an officer of The New York Central Railroad Company, one of the objectors above named, to wit: the Treasurer thereof; that the foregoing objections are true to his own knowledge, except as to the matters therein stated to be al-
606 leged upon information and belief and as to those matters he believes it to be true.

E. L. Rossiter.

Sworn to before me this 29th day of April, 1927.

Clarence K. Purdy, Notary Public, Westchester County, Certificate filed in N. Y. & Bronx Co., N. Y. Co. Clks. No. 7, Reg. No. 9015, Bronx Co. Clks. No. 1, Reg. No. 2901, Commission expires March 31, 1929.

607

State of New York, County of New York, ss.:

H. G. Snelling being duly sworn, deposes and says: that he is an officer of the New York and Harlem Railroad Company, one of the objectors above named, to wit: the Treasurer thereof; that the foregoing objections are true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

H. G. Snelling.

608

Sworn to before me this 29th day of April, 1927.

Clarence K. Purdy, Notary Public, Westchester County, Certificate filed in N. Y. & Bronx Co., N. Y. Co. Clks. No. 7, Reg. No. 9015, Bronx Co. Clks. No. 1, Reg. No. 2901, Commission expires March 31, 1929.

State of New York, County of New York, ss.:

H. G. Snelling being duly sworn, deposes and says: That he is an officer of the New York State Realty and Terminal Company, one of the objectors above named, to wit the Treasurer thereof; that the foregoing objections are true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

609

H. G. Snelling.

Sworn to before me this 29th day of April, 1927.

Clarence K. Purdy, Notary Public, Westchester County, Certificate filed in N. Y. & Bronx Co., N. Y. Co. Clks. No. 7, Reg. No. 9015, Bronx Co. Clks. No. 1, Reg. No. 2901, Commission expires March 31, 1929.

610 **Objections of Pershing Square Building Corporation to Tentative Decree.**

New York Supreme Court, First Judicial District.

[SAME TITLE]

To The Honorable, the Supreme Court of the State of New York:

Pershing Square Building Corporation, a domestic corporation having its principal office at No. One Park Avenue, Borough of Manhattan, City of New York, being the owner of the premises situ-
611 ated on the easterly side of Park Avenue, extending from the southerly side of East 42nd Street to the northerly side of East 41st Street, Borough of Manhattan, City of New York, known as and by the street number 100 East 42nd Street, and designated in this proceeding as Lot 1 Block 1296, plot No. 55 on the Map for Assessment for Benefits, hereby objects to the tentative decree as to award for damage and assessments for benefit in the above entitled proceeding, signed by the Honorable James O'Malley, Justice of the Supreme Court, on the 4th day of April, 1927, and filed in the office
612 of the Clerk of the County of New York on the 11th day of April, 1927, upon the following grounds:

(1) The award of $975,438, as compensation for the property acquired in the above entitled proceeding is grossly excessive in amount and leads to the conclusion that an erroneous principle of damage was followed in arriving at the amount thereof.

(2) The award of $975,438, as compensation for the property acquired in the above entitled proceeding is excessive and based upon an erroneous

613

theory of damage for the reason that it includes an amount representing a valuation of the franchise of the claimant, Manhattan Railway Company, to maintain and operate the 42nd Street elevated railroad spur, whereas said franchise was of no value to the claimant, but in fact was a liability, and the operation of the said elevated spur was conducted at a continuous loss to the claimant.

(3) The award of $975,438, is excessive and based upon an erroneous theory of damage for the reason that it includes an amount representing the value of the so-called right of the claimant to impair the easements of light, air and access belonging to the owners of property abutting the street, which so-called right was considered to be a property of the claimant separate and apart from the claimant's franchise to maintain and operate an elevated railroad. The valuation placed upon such so-called right is excessive and was based upon an erroneous theory of damage for the reason that such so-called right is a part of the claimant's franchise and should not have been valued separately from such franchise.

614

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(4) The award of $975,438, is excessive and based upon an erroneous theory of damage for the reason that it includes an amount representing the cost of changes made by the claimant to its station and structure at 3rd Avenue and 42nd Street on the theory that all of such changes were rendered necessary by the removal of the elevated spur whereas only a portion of such changes were in fact made because of such removal.

(5) Pershing Square Building Corporation objects to the award in the tentative decree, signed and filed as aforesaid, upon the ground that the

theory of damage upon which the award to the claimant is based is erroneous in that the franchise of the claimant and the so-called right of the claimant to impair the light, air and access of owners of property abutting the street were considered to be separate rights for which claimant was entitled to receive separate awards, whereas much franchise and such so-called right of the claimant are inseparable and inter-dependent in that the franchise could not be used without the right and the so-called right could not be obtained without
617 the franchise.

Edmund W. Van Voorhis, Attorney for Objector Pershing Square Building Corporation, Office and Post Office Address, One Park Avenue, Borough of Manhattan, New York City.

State of New York, County of New York, City of New York, ss.:

Henry Mandel, being duly sworn, deposes and says, that he is the Vice-President of Pershing Square Building Corporation, the objector above named; that the objector is a New York Corpora-
618 tion and that the deponent is an officer thereof; that deponent has read the foregoing objections and knows the contents thereof and that the same are true of his own knowledge, except as to the matters that are stated therein to be alleged upon information and belief and as to those matters he believes it to be true.

Henry Mandel.

Sworn to before me this 29th day of April, 1927.

Hyman Mandel, Notary Public, New York County. N. Y. Co. Clk's No. 49, Reg. No. 9079. Certificate filed in Westchester Co. Certificate filed in Queens County. Queens Co. Clk's No. 1751, Reg. No. 1923. Commission expires March 30, 1929.

Objections of Robert W. Goelet to Tentative Decree. 619

New York Supreme Court, New York County.

[SAME TITLE]

Robert Walton Goelet, whose post office address is 9 West 17th Street, Borough of Manhattan, City, County and State of New York, is the owner of the following described real property located in the Borough of Manhattan, City, County and State of New York, and affected by the tentative Decree made and entered herein on April 4, 1927, and filed in the office of the Clerk of the County of New York on April 11, 1927: 620

Block No.	Lot No.	Street No.
1296	20	378-87 Lexington Avenue and 132 East 42nd Street
	46	128-46 East 42nd Street
	22	375 & 377 Lexington Avenue
1284	1	1 East 48th Street
1283	6	3 East 47th Street
	67	4 East 48th Street
	69	591 Fifth Avenue
	71	589 Fifth Avenue 621
1282	17	17-29 East 46th Street
1281	60	18 East 46th Street
1321	1	757 Third Avenue
1321	2	759 Third Avenue
	3	761 Third Avenue
	4	763 Third Avenue
	5	205-13 East 47th Street
	4½	203 East 47th Street
	10	215 East 47th Street
	50½	765 Third Avenue

622 *Objections of Robert W. Goelet.*

1299	27	147 East 44th Street
	28	149 East 44th Street
	29	151 East 44th Street
	44	140 East 45th Street
	to	142 East 45th Street
	47	144 East 45th Street
	46½	146 East 45th Street
		148 East 45th Street.

Said Robert Walton Goelet hereby objects to said Decree upon the following grounds:

623 1. Upon information and belief, the award or awards made and provided for in and by said Decree to and for the said Manhattan Railway Company, or whomsoever was or may have been the owner of said premises, are unjust, inequitable, excessive and disproportionate to the true and fair value of the properties for which said award or awards was or were granted or provided for.

2. Upon information and belief, the assessments tentatively levied or attempted to be levied or determined under and/or pursuant to said tentative Decree are excessive, unjust and inequitable in
624 that—

(a) The zones of benefit upon which said tentative assessments are attempted to be levied or determined are and have been erroneously, unjustly and inequitably determined, thereby resulting in unjust, erroneous, excessive and disproportionate assessments upon all of the properties assessed or attempted to be assessed under or pursuant to said Decree;

(b) Said tentative assessment levied or attempted to be levied or determined under or by said Decree has not been equitably proportioned

over the entire properties benefited or claimed to have been benefited; 625

(c) The assessments tentatively levied upon the properties belonging to said Robert Walton Goelet are excessive and disproportionate to the assessments levied upon the other properties under and pursuant to said Decree;

(d) Said tentative assessments upon said properties of Robert Walton Goelet are disproportionate to whatever benefit, if any, said properties have received or may be deemed to receive. 626

3. Upon information and belief, the assessments attempted to be levied or determined by said Decree are unlawful and amount to double taxation.

Wherefore, the said objector accordingly prays that a hearing be had herein, in accordance with the law in such case provided, upon said tentative Decree and the objections above specified.

Dated, New York, April 29, 1927.

Shearman & Sterling, Attorneys for Robert Walton Goelet, 55 Wall Street, New York, N. Y. 627

State of New York, County of New York, ss.

Robert Walton Goelet, being duly sworn, says that he is the person designated in the foregoing objections as the owner of the properties therein described, that he has read the said objections and that the same are true to his own knowledge, except as to the matters therein stated to be alleged

628 on information and belief, and that as to those matters he believes it to be true.

(S) Robert Walton Goelet.

Sworn to before me, this 29th day of April, 1927.

(Seal) Philip D. Ferrall, Notary Public, Kings County, Clerk's No. 474, Register's No. 9082, Certificate filed in New York Co., Clerk's No. 93, Register's No. 9101, Commission expires March 30, 1929.

629

Objections of 145 East 41st Street Corporation to Tentative Decree.

New York Supreme Court, New York County.

[SAME TITLE]

145 East 41st Street Corporation, whose post office address is 55 Wall Street, Borough of Manhattan, City, County and State of New York, is the owner of the following described real property located in the Borough of Manhattan, City, County and State of New York, and affected by the tentative Decree made and entered herein on April 4, 1927, and filed in the office of the Clerk of the County of New York on April 11, 1927:

630

Block No.	Lot No.	Street No.
1296	25	137-143 East 41st Street
1296	30	145 East 41st Street
1296	31	147 East 41st Street
1296	32	149 East 41st Street
1296	35	644 Third Avenue.

Said 145 East 41st Street Corporation hereby objects to said Decree upon the following grounds:

Objections of 145 E. 41st St. Corp. 631

1. Upon information and belief, the award or awards made and provided for in and by said Decree to and for the said Manhattan Railway Company, or whomsoever was or may have been the owner of said premises, are unjust, inequitable, excessive and disproportionate to the true and fair value of the properties for which said award or awards was or were granted or provided for.

2. Upon information and belief, the assessments tentatively levied or attempted to be levied or determined under and/or pursuant to said tentative Decree are excessive, unjust and inequitable in that— 632

(a) The property of said 145 East 41st Street Corporation does not receive any benefit whatsoever by reason of the acquisition and/or removal of the property for which the said award or awards was or were made;

(b) The zones of benefit upon which said tentative assessments are attempted to be levied or determined are and have been erroneously, unjustly and inequitably determined, thereby resulting in unjust, erroneous, excessive and disproportionate assessments upon all of the properties assessed or attempted to be assessed under or pursuant to said Decree; 633

(c) Said tentative assessments levied or attempted to be levied or determined under or by said Decree have not been equitably proportioned over the entire properties benefited or claimed to have been benefited;

(d) The assessments tentatively levied upon the properties belonging to said 145 East 41st Street Corporation are excessive and disproportionate to

634 *Objections of 145 E. 41st St. Corp.*

the assessments levied upon the other properties under and pursuant to said Decree.

3. Upon information and belief, the assessments attempted to be levied or determined by said Decree are unlawful and amount to double taxation.

Wherefore, the said objector accordingly prays that a hearing be had herein, in accordance with the law in such case provided, upon said tentative Decree and the objections above specified.

Dated, New York, April 29, 1927.

635

145 East 41st Street Corporation, 55 Wall Street, Borough of Manhattan, City of New York.

State of New York, County of New York, ss.:

Edison Lewis, being duly sworn, says that he is Vice-President of 145 East 41st Street Corporation, which is a domestic corporation and is the owner of the properties described in the foregoing objection; that the said objection is true to his own knowldege, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

636

Edison Lewis.

Sworn to before me this 29th day of April, 1927.

John D. Tansill, Notary Public, New York County, New York Co. Clerk No. 144, New York Co. Reg. No. 8204, Term expires March 30, 1928.

Objections of National City Bank of N. Y. to Tentative Decree. 637

New York Supreme Court, New York County.

[SAME TITLE]

The National City Bank of New York, whose post office address is 55 Wall Street, Borough of Manhattan, City, County and State of New York, is the owner of the following described real property located in the Borough of Manhattan, City, County and State of New York, and affected by the tentative Decree made and entered herein on April 4, 1927, and filed in the office of the Clerk of the County of New York on April 11, 1927: 638

Block No.	Lot No.	Street No.
1277	14	15-17 East 42nd Street

Said The National City Bank of New York hereby objects to said Decree upon the following grounds:

1. Upon information and belief, the award or awards made and provided for in and by said Decree to and for the said Manhattan Railway Company, or whomsoever was or may have been the owner of said premises, are unjust, inequitable, excessive and disproportionate to the true and fair value of the properties for which said award or awards was or were granted or provided for. 639

2. Upon information and belief, the assessments tentatively levied or attempted to be levied or determined under and/or pursuant to said tentative Decree are excessive, unjust and inequitable in that—

(a) The property of said The National City Bank of New York does not receive any benefit

640 *Objections of Nat. City Bank.*

whatsoever by reason of the acquisition and/or removal of the property for which the said award or awards was or were made;

(b) The zones of benefit upon which said tentative assessments are attempted to be levied or determined are and have been erroneously, unjustly and inequitably determined, thereby resulting in unjust, erroneous, excessive and disproportionate assessments upon all of the properties assessed or attempted to be assessed under or pursuant to said Decree;

641

(c) Said tentative assessments levied or attempted to be levied or determined under or by said Decree have not been equitably proportioned over the entire properties benefited or claimed to have been benefited;

(d) The assessments tentatively levied upon the properties belonging to said The National City Bank of New York are excessive and disproportionate to the assessments levied upon the other properties under and pursuant to said Decree;

642 3. Upon information and belief, the assessments attempted to be levied or determined by said Decree are unlawful and amount to double taxation.

Wherefore, the said objector accordingly prays that a hearing be had herein, in accordance with the law in such case provided, upon said tentative Decree and the objections above specified.

Dated, New York, April 29, 1927.

The National City Bank of New York, 55 Wall Street, Borough of Manhattan, City of New York.

643

State of New York, County of New York, ss.

G. E. Gregory, being duly sworn, says that he is a Vice-President of The National City Bank of New York, which is a domestic corporation and is the owner of the properties described in the foregoing objection, that the said objection is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

G. E. Gregory.

644

Sworn to before me this 29th day of April, 1927.

(Notarial Seal). Horace E. Gill, Notary Public, Westchester County, Certificate filed in N. Y. Co., N. Y. Co. Clerk's No. 73, N. Y. Co. Register's No. 9056. Commission expires March 30, 1929.

Objections of National City Realty Corporation to Tentative Decree.

New York Supreme Court, New York County.

[Same Title]

645

National City Realty Corporation, whose post office address is 55 Wall Street, Borough of Manhattan, City, County and State of New York, is the lessee of the following described real property located in the Borough of Manhattan, City, County and State of New York, and affected by the tentative Decree made and entered herein on April 4, 1927, and filed in the office of the Clerk of the County of New York on April 11, 1927.:

Block No. 1277, Lot No. 14, Street No. 15-17 East 42nd Street.

646 *Objections of Nat. City Realty Corp.*

Said National City Realty Corporation hereby objects to said Decree upon the following grounds:

1. Upon information and belief, the award or awards made and provided for in and by said Decree to and for the said Manhattan Railway Company, or whomsoever was or may have been the owner of said premises, are unjust, inequitable, excessive and disproportionate to the true and fair value of the properties for which said award or awards was or were granted or provided for.

647 2. Upon information and belief, the assessments tentatively levied or attempted to be levied or determined under and/or pursuant to said tentative Decree are excessive, unjust and inequitable in that—

(a) The property of said National City Realty Corporation does not receive any benefit whatsoever by reason of the acquisition and/or removal of the property for which the said award or awards was or were made;

(b) The zones of benefit upon which said tentative assessments are attempted to be levied or determined are and have been erroneously, unjustly and inequitably determined, thereby resulting in unjust, erroneous, excessive and disproportionate assessments upon all of the properties assessed or attempted to be assessed under or pursuant to said Decree;

(c) Said tentative assessments levied or attempted to be levied or determined under or by said Decree have not been equitably proportioned over the entire properties benefited or claimed to have been benefited;

649

(d) The assessments tentatively levied upon the properties leased by said National City Realty Corporation are excessive and disproportionate to the assessments levied upon the other properties under and pursuant to said Decree.

3. Upon information and belief, the assessments attempted to be levied or determined by said Decree are unlawful and amount to double taxation.

Wherefore, the said objector accordingly prays that a hearing be had herein, in accordance with the law in such case provided, upon said tentative 650
Decree and the objections above specified.

Dated, New York, April 29, 1927.

National City Realty Corporation, 55 Wall Street, Borough of Manhattan, City of New York.

State of New York, County of New York, ss.:

Gordon S. Rentschler, being duly sworn, says that he is a Vice-President of National City Realty Corporation, which is a domestic corporation and is the Lessee of the properties described in the foregoing objection; that the said objection is true 651
to his own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

Gordon S. Rentschler.

Sworn to before me, this 29th day of April, 1927.

Horace E. Gill, Notary Public, Westchester County, Certificate filed in N. Y. Co., N. Y. Co. Clerk's No. 73. N. Y. Co. Register's No. 9056. Commission expires March 30, 1929.
(Notarial Seal)

652 **Objections of Cooper Union for Advancement of Science and Art to Tentative Decree.**

Supreme Court, New York County.

[SAME TITLE]

Cooper Union for the Advancement of Science and Art, a party interested in this proceeding and in certain of the real property assessed and affected thereby as owner thereof, hereby apears herein by Parsons, Closson & McIlvaine, its attorneys, and
653 objects to the award and the assessments set forth and contained in the tentative decree herein filed in the New York County Clerk's office on April 4, 1927, and alleges upon information and belief:

First: Your objector Cooper Union for the Advancement of Science and Art is a corporation of the State of New York, incorporated by Special Act of the legislature of the State of New York known as Chapter 279 of the Laws of 1859; and its post-office address is Cooper Square, Borough of Manhattan, City of New York, N. Y.

Second: The real property owned by your
654 objector and affected by this proceeding is that parcel of land bounded and described as follows:

Commencing at the northeast corner of 42nd Street and Lexington Avenue running thence northwardly along the easterly side of Lexington Avenue to the southerly line of 43rd Street; thence eastwardly along the same two hundred and five (205) feet; thence southerly parallel with Lexington Avenue twenty-eight (28) feet seven (7) inches; thence southwestwardly along the center line of what was formerly known as the old East-

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ern Post Road to the northerly side of 42nd Street, and thence westwardly along the same one hundred sixty-seven (167) feet two (2) inches to the point of beginning.

Said premises being designated on the tax map of the City of New York as Lot 23 of Block 1297 and on the assessment or benefit map herein as Lot 15.

The assessment against the said premises of your objector as fixed by the tentative decree herein is the sum of $98,574.45.

656

Third: For its objections and the grounds thereof your objector states as follows:

1. The compensation and award to be made to the owner or owners of the real estate and/or other property acquired herein has not been correctly or justly estimated by the court, and the amount thereof awarded to the Manhattan Railway Company and/or other owner or owners as stated in said tentative decree is incorrect, unjust and excessive, and is greater than the loss and damage sustained;

657

2. The award is not supported by the weight of evidence and is contrary to the evidence and contrary to law;

3. The award contains elements of damage which ought not properly or legally to be included; it includes damages for property or rights not taken or diminished in value by this proceeding; it includes damages for property and rights not owned by the Manhattan Railway Company or by any other person or corporation; and it is excessive and invalid in so far as it includes such elements or any of them;

658 4. The award is excessive and invalid to the extent that it includes damages for the value of the franchise of the Manhattan Railway Company to maintain and operate an elevated railroad within the area included in this proceeding; such franchise according to the weight of evidence had no value and the valuation thereof by the court as included in the award as fixed was based upon an erroneous theory of law and is contrary to the evidence and weight of evidence;

659 5. The award as fixed by the court includes not merely the loss and damage sustained by the Manhattan Railway Company and/or other owner or owners whose property and rights have been acquired in this proceeding, but includes also an amount based upon the benefit and advantage alleged to accrue to your objector's property above described, and the other properties assessed in this proceeding; and to that extent the award is unjust, excessive, illegal and invalid; and the evidence as to the extent of such benefit and advantage was incompetent and was improperly admitted;

660 6. The award includes excessive damages for the physical structure acquired in this proceeding. The value of such structure to the Manhattan Railway Company or other owner did not exceed $250. The portion of the award which includes damages for such structure is based upon an erroneous theory of law and is contrary to the evidence and the weight of evidence;

7. A just and equitable estimate of the assessment of the value of the benefit and advantage of the improvement to the owners within the area

of assessment has not been made in proportion to the amount of benefit received; 661,

8. The total amount of the assessments levied against all the properties lying within the area of assessment is in excess of the amount of the awards, with the interest thereon and the costs and expenses of this proceeding, and the assessment against the property of your objector is to this extent excessive; the total amount of the assessments in the proceeding exceeds the total benefit and advantage to all the properties assessed; and the amount of the assessment against your objector's property exceeds the benefit and advantage accruing to such property by reason of the improvement; 662

9. The assessments have not been made in proportion to the amount of benefit received, particularly within Zone A of the area of assessment. Your objector's property has been assessed at a higher rate than other properties in said Zone A benefited to the same or a greater degree than your objector's property, and other properties in said Zone benefited to a greater degree than your objector's property have been assessed at the same or a lesser rate than your objector's property; 663

10. The assessment against Lot 1 of Block 1280 designated on the assessment map herein as Lot No. 13 (property of the New York Central and Hudson River Railroad Company) is inadequate and at a much lower rate and in a smaller amount in proportion to area than the assessments against this objector's property and the other properties lying within said Zone A, whereas, in fact, said lot receives a much greater benefit from the improvement than the property owned by your objector;

664 the said lot is not occupied exclusively by railroad tracks or for the operation or passage of trains but is improved by a building containing in part stores and offices tenanted and occupied by others for miscellaneous business;

11. The respective assessments against the following lots, namely: Lot No. 30 of Block 1280 designated on the assessment map herein as lot 14; lot 29 of Block 1297 designated on the assessment map herein as lot 19; lot 30 of Block 1297 designated on the assessment map herein as lot
665 20; lot 31 of Block 1297 designated on the assessment map herein as lot 21; lot 32½ of Block 1297 designated on the assessment map herein as lot 23; lot 1 of Block 1296 designated on the assessment map herein as lot 55; lot 63 of Block 1296 designated on the assessment map herein as Lot 56; lot 61 of Block 1296 designated on the assessment map herein as lot 57; lot 14 of Block 1296 designated on the assessment map herein as lot 58; lot 40 of Block 1296 designated on the assessment map herein as lot 64 are, and each of them is, inadequate and much lower in proportion to
666 benefit than the assessment against your objector's property, whereas, in fact, said lots do, and each of them does, receive a much greater benefit in proportion to area from the improvement than your objector's property. The properties which were adjacent to the elevated railroad station platforms and switches were benefited by the removal thereof to a greater extent than the property of your objector, which was not adjacent thereto. Your objector's property was benefited to a lesser degree also by reason of its location at the corner of an intersecting street;

667

12. The City of New York is not authorized by law to maintain this proceeding in order to acquire the right to extinguish the rights, easements and franchises of the Manhattan Railway Company in connection with said elevated railroad structures, and no assessment may lawfully be made against your objector's property for any compensation, loss or damage in connection therewith, and insofar as Chapter 788 of the laws of 1917 as amended by Chapter 611 of the laws of 1919, and Chapter 635 of the laws of 1923 may be held to authorize the same, said statutes are unconstitutional. 668 Whatever right the Manhattan Railway Company had to impair the easements of light, air and access or other street or property easements appurtenant to your objector's property was not susceptible of condemnation or acquisition by the City of New York in this proceeding, and insofar as said statutes may be held to authorize the same said statutes are unconstitutional and void. The said elevated railroad structure, tracks, stations, platforms and stairways constituted a public nuisance maintained by the said Manhattan Railway Company or other person or corporation, and they were so 669 declared by the lawfully constituted authority in that behalf, and not created or authorized by your objector or any other owner of property assessed in this proceeding, and their removal constituted a lawful abatement of such nuisance; and insofar as said statutes may be held to authorize the removal of said structures by condemnation and the payment of compensation therefor and the assessment of your objector's property therefor, said statutes are unconstitutional and void. The easements of light, air and access and street and property easements were not an appurtenance to said

670 elevated railroad structures or to the franchise of the said Manhattan Railway Company or other owner thereof, and no proceeding by the City of New York to acquire or condemn the same could lawfully be brought or maintained, but said easements were appurtenant solely to the adjacent properties to which they automatically revived and were restored in their original undiminished form and extent upon the removal of such structures;

671 13. The assessment proposed by the tentative decree to be levied against your objector's property, being a charge for the abatement of a public nuisance and/or an assessment in part for the value of property not taken or diminished in value by the improvement, constitutes a taking of the property of this objector without due process of law, contrary to the constitution of this State and of the United States.

Cooper Union for the Advancement of Science and Art, Objector. By Edward L. Rehm, Its Secretary.

672 Parsons, Closson & McIlvaine, Attorneys for Objector, Office & P. O. Address, No. 52 William Street, Borough of Manhattan, New York City, N. Y.

State of New York, County of New York, ss.:

Edward L. Rehm, being duly sworn, deposes and says: That he is the Secretary of Cooper Union for the Advancement of Science and Art, the Objector above named; that he has read the foregoing objections and knows the contents thereof and that the same are true of his own knowledge, except as to the matters therein stated to be alleged on in-

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formation and belief, and as to those matters he believes it to be true.

Edward L. Rehm.

Sworn to before me this 2nd day of May, 1927.

Anna A. McCarthy, Notary Public, New York Co. No. 138. New York Co. Register No. 9076, Certificate filed in Bronx County No. 14, Register No. 2934. Commission expires March 30, 1928.

Objections of Manhattan Storage and Warehouse Co. to Tentative Decree.

674

Supreme Court, New York County.

[SAME TITLE]

The Manhattan Storage & Warehouse Company, a party interested in this proceeding and in certain of the real property assessed and affected thereby as owner thereof, hereby appears herein by Middlebrook & Sincerbeaux, its attorneys, and objects to the award and the assessments set forth and contained in the tentative decree herein filed in the New York County Clerk's office on April 4, 1927, and alleges upon information and belief:

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First.—That it is a corporation organized and existing under the Laws of the State of New York, having its principal place of business at No. 801 Seventh Avenue, in the Borough of Manhattan, City of New York, which number is its Post Office address.

Second.—The real property owned by your objector and affected by this proceeding is that parcel of land which is known on the Tax Map of the City of New York as Lot No. 14, in Block 1296.

676 *Objections of Manhattan S. & W. Co.*

The assessment against the said premises of your objector, as fixed by the tentative decree herein, is the sum of $71,320.20.

Third.—For its objections and the grounds thereof your objector states as follows:

1. The compensation and award to be made to the owner or owners of the real estate and/or other property acquired herein has not been correctly or justly estimated by the court, and the amount thereof awarded to the Manhattan Rail-
677 way and/or other owner or owners as stated in said tentative decree is incorrect, unjust and excessive, and is greater than the loss and damage sustained;

2. The award is not supported by the weight of evidence and is contrary to the evidence and contrary to law;

3. The award contains elements of damage which ought not properly or legally to be included; it includes damages for property or rights not taken or diminished in value by this proceeding; it includes damages for property and rights not
678 owned by the Manhattan Railway Company or by any other person or corporation; and it is excessive and invalid in so far as it includes such elements or any of them;

4. The award is excessive and invalid to the extent that it includes damages for the value of the franchise of the Manhattan Railway Company to maintain and operate an elevated railroad within the area included in this proceeding; such franchise according to the weight of evidence had no value and the valuation thereof by the court as included in the award as fixed was based upon an

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erroneous theory of law and is contrary to the evidence and weight of evidence.

5. The award as fixed by the court includes not merely the loss and damage sustained by the Manhattan Railway Company and/or other owner or owners whose property and rights have been acquired in this proceeding, but includes also an amount based upon the benefit and advantage alleged to accrue to your objector's property above described, and the other properties assessed in this proceeding; and to that extent the award is unjust, excessive, illegal and invalid; and the evidence as to the extent of such benefit and advantage was incompetent and was improperly admitted;

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6. The award includes excessive damages for the physical structure acquired in this proceeding. The value of such structure to the Manhattan Railway Company or other owner did not exceed $250. The portion of the award which includes damages for such structure is based upon an erroneous theory of law and is contrary to the evidence and the weight of evidence;

7. A just and equitable estimate of the assessment of the value of the benefit and advantage of the improvement to the owners within the area of assessment has not been made in proportion to the amount of benefit received;

681

8. The total amount of the assessments levied againhst all the properties lying within the area of assessment is in excess of the amount of the awards, with the interest thereon and the costs and expenses of this proceeding, and the assessment against the property of your objector is to this extent excessive;

682 *Objections of Manhattan S. & W. Co.*

9. The total amount of the assessments in the proceeding exceeds the total benefit and advantage to all the properties assessed;

10. The amount of the assessment against your objector's property, as stated in the tentative decree, exceeds the benefit and advantage accruing to such property by reason of the improvements;

11. The assessments have not been made in proportion to the amount of benefit received, particularly within Zone A of the area of assessment.
683 Your objector's property has been assessed at a higher rate than other properties in said Zone A benefited to the same or a greater degree than your objector's property and other properties in said Zone benefited to a greater degree than your objector's property have been assessed at the same or a lesser rate than your objector's property;

12. The assessment against Lot 1 of Block 1280, designated on the assessment map herein as Lot No. 13 (property of the New York Central and Hudson River R. R. Co.) is inadequate and at a much lower rate and in a smaller amount in pro-
684 portion to area than the assessments against this objector's property and the other properties lying within said Zone A, whereas, in fact, said lot receives a much greater benefit from the improvement than the property owned by your objector;

13. The respective assessments against the following lots, namely: Lot No. 30 of Block 1280 designated on the assessment map herein as lot 14; lot 29 of Block 1297 designated on the assessment map herein as lot 19; lot 30 of Block 1297 designated on the assessment map herein as lot 20; lot 31 of Block 1297 designated on the assessment map here-

in as lot 21; lot 32½ of Block 1297 designated on the assessment map herein as lot 23; lot 1 of Block 1296 designated on the assessment map herein as lot 55; lot 63 of Block 1296 designated on the assessment map herein as lot 56; lot 61 of Block 1296 designated on the assessment map herein as lot 57; lot 23 of Block 1297 designated on the assessment map herein as lot 15; lot 40 of Block 1296 designated on the assessment map herein as lot 64 are, and each of them is, inadequate and much lower in proportion to benefit than the assessment against your objector's property, whereas, in fact, said lots do, and each of them does, receive a much greater benefit in proportion to area from the improvement than your objector's property. The properties which were adjacent to the elevated railroad station platforms and switches were benefited by the removal thereof to a greater extent than the property of your objector, which was not adjacent thereto. Your objector's property was benefited to a lesser degree also by reason of its location at the corner of an intersecting street;

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14. The City of New York is not authorized by law to maintain this proceeding in order to acquire the right to extinguish the rights, easements and franchises of the Manhattan Railway Company in connection with said elevated railroad structure, and no assessment may lawfully be made against your objector's property for any compensation, loss or damage in connection therewith, and in so far as Chapter 788 of the laws of 1917 as amended by Chapter 611 of the laws of 1919, and Chapter 635 of the laws of 1923 may be held to authorize the same, said statutes are unconstitutional. Whatever right the Manhattan Railway Company had to impair the easements of light, air

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and access appurtenant to your objector's property was not susceptible of condemnation or acquisition by the City of New York in this proceeding, and in so far as said statutes may be held to authorize the same said statutes are unconstitutional and void. The said elevated railroad structure track, stations, platforms and stairways constitute a public nuisance maintained by the said Manhattan Railway Company or other person or corporation, and they were so declared by the lawfully constituted authority in that behalf, and not
689 created or authorized by your objector or any other owner of property assessed in this proceeding, and their removal constituted the lawful abatement of a nuisance; and in so far as said statutes may be held to authorize the removal of said structures by condemnation and the payment of an award therefor and the assessment of your objector's property therefor, said statutes are unconstitutional and void. The easements of light, air and access were not an appurtenance to said elevated railroad structures or to the franchise of the said Manhattan Railway Company or other owner
690 thereof, and no proceeding by the City of New York to acquire or condemn the same could lawfully be brought or maintained, but said easements were appurtenant solely to the adjacent properties to which they automatically revived and were restored in their original undiminished form and extent upon the removal of such structures;

15. The assessment proposed by the tentative decree to be levied against your objector's property constitutes a charge for the abatement of a public nuisance and is an assessment in part for the value of property not taken or diminished in

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value by the improvement and constitutes a taking of the property of this objector without due process of law, contrary to the constitution of this State and tc the constitution of the United States.

The Manhattan Storage and Warehouse Company, by John C. Neeser, President.

Middlebrook & Sincerbeaux, Attorneys for Objector, Office and P. O. Address, No. 57 William Street, Borough of Manhattan, City of New York.

State of New York, City of New York, County of New York, ss.:

692

John C. Neeser, being duly sworn, deposes and says that he is the President of The Manhattan Storage and Warehouse Company, the Protestant in the above entitled proceeding; that he has read the foregoing Protest and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true. That the reason why this verification is made by deponent and not by the said The Manhattan Storage and Warehouse Company is that the said The Manhattan Storage and Warehouse Company is a corporation and that deponent is an officer thereof, to wit, the President, and deponent further states that he derives his information and belief as to the matters set forth in the foregoing Protest in his capacity as President of the aforesaid corporation.

693

John C. Neeser.

Sworn to before me this second day of May, 1927.

Louis K. Hyde, Notary Public, New York Co. N. Y. Co. Clks. No. 474. Reg. No. 8585. My Commission Expires Mar. 30, 1928.

694 **Objections of Seward W. Ehrich, Inc. to Tentative Decree.**

Supreme Court of the State of New York, County of New York.

[Same Title]

To the Supreme Court of the State of New York:

Seward W. Ehrich, Inc. whose post-office address is No. 501 Lexington Avenue, in the Borough of Manhattan, New York City, being the owner in fee herein and liable for the assessment herein of the
695 real property at No. 156-8 East 42nd Street, situate in the Borough of Manhattan, New York City, and described as Lot No. 41 Block No. 1296 Map No. 63 against which property a tentative assessment in the amount of $23,299.39 has been levied in these proceedings, appearing by Hollander & Bernheimer, its attorneys, hereby objects to the tentative decree herein and to the award and assessment thereunder, and for its objections (without waiving any other objections not herein specifically set forth) respectfully shows to this Court, upon information and belief, the following:

696 1. That the amount of the assessment proposed to be levied upon the premises of this objector exceeds the value of the benefit and advantages derived by said premises by reason of this proceeding, and the removal of the structure more particularly in said proceedings described.

2. That the assessment proposed to be levied upon the premises of this objector is illegal and invalid by reason of such over-valuation of benefit, and the total award made in the tentative decree and the assessments based thereon are excessive,

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contrary to law and contrary to the evidence adduced in this proceeding.

3. That the objections to said tentative decree and the award and assessments filed or to be filed herein by the City of New York are hereby referred to and made a part hereof as if herein set forth at length as objections also presented on the part of the undersigned objector.

4. That said award should be in all respects vacated and said assessment cancelled and set aside in whole or in part.

698

Wherefore, the objector requests an opportunity to be heard in support of the foregoing objections.

Hollander & Bernheimer, Attorneys for Objector, Seward W. Ehrich, Inc., Office & P. O. Address, No. 61 Broadway, Borough of Manhattan, New York City.

State of New York, County of New York, ss.:

Seward W. Ehrich, being duly sworn, deposes and says: That he is the President of Seward W. Ehrich, Inc. the objector herein; that he has read the foregoing objections to the award and assessment and the provisions of the tentative decree herein. That the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true. That the objector is a domestic corporation.

699

Seward W. Ehrich.

Sworn to before me this 29th day of April, 1927.

Mary Walsh, Notary Public, New York County.

700 **Testimony Taken Before Supreme Court.**

Supreme Court—New York County, Extraordinary Special Term.

[SAME TITLE]

Before: Hon. James O'Malley, Justice.

New York, September 27th, 1923.

Appearances: George P. Nicholson, Esq., Corporation Counsel, for the City of New York, by L. Howell La Motte, Esq., Assistant Corporation Counsel. James L. Quackenbush, Esq., for the In-
701 terborough Rapid Transit Company, by J. Osgood Nichols, Esq., of Counsel. Messrs. Murray, Prentice & Aldrich, for the Manhattan Railway Company, by William Roberts, Esq., of Counsel. William H. Page, Esq., for the 42nd Street Association.

Mr. La Motte: May it please the court, the Governor has appointed this Extraordinary Special Term of the Supreme Court for the purpose of trying a proceeding instituted by The City of New York to acquire title to what is known as the 42nd Street spur. My purpose this morning, with the approval of the court, is to prove certain jurisdic-
702 tional facts; after that to ask the court to view the structure, the property condemned, and then to adjourn this cause until November, in order to give both sides time to prepare for the actual trial of the case.

The Court: Do any other counsel want to be heard?

Mr. Nichols: That is quite agreeable. We have every desire to facilitate the purpose stated here.

The Court: Very well, I will be very glad to do that. All appearances have been noted, I assume?

703

Mr. La Motte: Yes, your Honor. I offer in evidence certified copy of the order of the Governor of the State of New York appointing this Extraordinary Special Term of the Supreme Court.

(Received in evidence and marked City's Exhibit No. 1.)

Mr. La Motte: This order provides that notice of the appointment be given by publication of the order in the New York Law Journal, the New York Times, the New York World and the New York Herald, respectively, on September 17th, 1923, and on September 20th, 1923. I now offer in evidence 704
an affidavit made by S. Wolfenden, made September 20th, 1923, showing that the order of the Governor was published in the New York Herald on September 17th and 20th, 1923.

(Received in evidence and marked City's Exhibit No. 2.)

Mr. La Motte: I offer in evidence an affidavit of John J. Cosgrove, made September 20th, 1923, showing that the order was published in the New York Law Journal on September 17th and 20th, 1923.

(Received in evidence and marked City's Exhibit No. 3.) 705

Mr. La Motte: I offer in evidence an affidavit of Albert H. Johannes, made September 20th, 1923, showing that the order of the Governor was published in the New York World on September 17th and 20th, 1923.

(Received in evidence and marked City's Exhibit No. 4.)

Mr. La Motte: I offer in evidence an affidavit of Charles W. Jaros, made September 20th, 1923, showing that the order was published in the New York Times on September 17th and 20th, 1923.

706 (Received in evidence and marked City's Exhibit No. 5.)

Mr. La Motte: This proceeding was instituted by The City of New York pursuant to special acts of the Legislature, which acts I now offer in evidence. I offer in evidence Chapter 788 of the Laws of 1917; which I assume will be considered in evidence?

The Court: Yes, that is received.

(Received in evidence and considered City's Exhibit No. 6.)

707 Mr. La Motte: I offer in evidence Chapter 611 of the Laws of 1919, which amended Chapter 788 of the Laws of 1917.

(Received in evidence and considered City's Exhibit No. 7.)

Mr. La Motte: I offer in evidence Chapter 635 of the Laws of 1923, which amended Chapter 788 of the Laws of 1917 as amended by Chapter 611 of the Laws of 1919.

(Received in evidence and considered City's Exhibit No. 8.)

708 Mr. La Motte: The Acts provided that negotiations should be taken up between the City and the Manhattan Railway Company for the removal of this spur by agreement.

The Court: The original Act or the final Act?

Mr. La Motte: The first Act which amended the original; I think that is the one. I now offer in evidence certified copy of the Resolution of the Board of Estimate and Apportionment adopted on December 5th, 1919, authorizing the President of the Borough of Manhattan to take up negotiations with the Manhattan Railway Company for the re-

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moval of the tracks, structures, stations, appurtenances, etc., constituting the spur.

(Received in evidence and marked City's Exhibit No. 9.)

Mr. La Motte: I offer in evidence pages 6350 to 6352, inclusive, of the minutes of the Board of Estimate and Apportionment, of the meeting of November 26th, 1920, being Volume 7 of the Minutes of Meetings held between November 13th and December 31st, 1920.

(Received in evidence and marked City's Exhibit No. 10.)

710

Mr. La Motte: City's Exhibit No. 10 is a letter from the President of the Borough of Manhattan to the Board of Estimate and Apportionment, to the effect that no agreement could be reached between him and the Railway Company as to the removal of this spur.

The Act also provided that in the event of the failure to agree, upon the presentation of a certified copy of a Resolution of the Board of Estimate and Apportionment containing a request therefor, the Public Service Commission should institute a proceeding and conduct a hearing before the

711

Commission for the purpose of determining whether such existing tracks, structures, etc., constituting the spur were necessary and convenient for the public service, and whether it constituted an impediment or obstruction to the public use of the street.

Mr. Nichols: It is understood, I presume, that the letter offered in evidence, stating that an agreement could not be reached, is not to be considered as evidentiary of any orther fact than that?

Mr. La Motte: That an agreement could not be reached, that is all.

712 *Testimony Taken Before Supreme Court.*

Mr. Nichols: Yes.

Mr. La Motte: Just that fact.

Mr. Nichols: Yes. It contains other facts, which I object to as evidence.

Mr. La Motte: I may have to supplement that with a further communication. I offer in evidence a certified copy of a resolution of the Board of Estimate and Apportionment of the City of New York, adopted on January 14th, 1921, requesting the Public Service Commission of the First District to institute a proceeding and conduct a hearing,
713 pursuant to the provisions of Chapter 788 of the Laws of 1917 as amended by Chapter 611 of the Laws of 1919, for the purpose of determining the questions and matters set forth and specified in said Acts.

(Received in evidence and marked City's Exhibit No. 11.)

Mr. La Motte: Pursuant to this Resolution proceedings were instituted before the Public Service Commission, and an order and determination by the Public Service Commission was had thereon on April 22nd, 1921. I offer in evidence a certified
714 copy of the order and determination of the Public Service Commission, dated the 22nd of April, 1921.

(Received in evidence and marked City's Exhibit No. 12.)

Mr. La Motte: The order and determination directed that a certificate showing the fact of the determination be filed in the office of the Secretary of State and be served upon the City of New York and the Manhattan Railway Company. I offer in evidence a certified copy of that certificate, issued by the Public Service Commission, dated April 22nd, 1921.

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(Received in evidence and marked City's Exhibit No. 13.)

Mr. La Motte: I am not prepared at this time to prove that that certificate was filed in the office of the Secretary of State and was served upon the City and the Manhattan Railway Company. I do not suppose you will stipulate that, Mr. Nichols?

Mr. Nichols: I will stipulate that it was served upon the Interborough-Manhattan, Company.

Mr. La Motte: If you do that, that will be a help.

716

Mr. Nichols: I have no knowledge of its being filed, of course. If I knew it, I would be glad to stipulate it.

Mr. La Motte: I will supply that.

The Court: Do that later.

Mr. La Motte: I offer in evidence a certified copy of the Resolution of the Board of Estimate and Apportionment adopted on September 30th, 1921, made in pursuance of the provisions of the special Acts, and of the Greater New York Charter as amended, deeming it necessary and advisable and for the public interest to condemn and remove the tracks, structures, stations, appurtenances and

717

rights and so forth, constituting the 42nd Street spur, and to apply to a Special Term of the Supreme Court to have compensation determined by the court without a jury.

(Received in evidence and marked City's Exhibit No. 14.)

Mr. La Motte: I offer in evidence a certified copy of a Resolution of the Board of Estimate and Apportionment adopted on June 29th, 1923, amending this Resolution adopted on September 30th, 1921, in conformity with the provisions of

the special law as amended by Chapter 635 of the Laws of 1923.

(Received in evidence and marked City's Exhibit No. 15.)

Mr. La Motte: Pursuant to these resolutions the City made application to the Supreme Court, Special Term, Part I, on July 16th, 1923, for an order to condemn and to determine the compensation, and that the compensation be determined by the Supreme Court without a jury, and that the cost of such improvement be assessed by the court in
719 accordance with the provisions of the special Acts of the Legislature, the Greater New York Charter, and the resolutions of the Board of Estimate and Apportionment. I offer in evidence the original notice of motion and petition of The City of New York.

The Court: Are you putting in the order and all papers, as one exhibit?

Mr. La Motte: Yes, sir. I will offer them separately.

The Court: Or all as one exhibit?

Mr. La Motte: They are all in one binder now.
720 I offer in evidence the notice of motion, the petition, the affidavits filed in opposition to the petition by the Railway Company, the answering affidavit of Mr. Swords filed in support of the motion, the order of the Special Term, Mr. Justice Bijur, overruling the objections of the railroad and granting the motion to condemn. These papers also contain the affidavits of the publishing and posting of the notice of the application to the court. I offer those in evidence also, as part of the same exhibit.

(Received in evidence and marked City's Exhibit No. 16.)

721 Mr. La Motte: I wish to state, for the record, that a claim has been filed by the Manhattan Railway Company, by Murray, Prentice & Aldrich, its attorneys, which I offer for identification.

(Received and marked City's Exhibit No. 17 for Identification.)

Mr. La Motte: And a claim of the Interborough Rapid Transit Company, by James L. Quackenbush, its attorney.

(Received and marked City's Exhibit No. 18 for Identification.)

722 Mr. La Motte: I offer in evidence the original draft Damage Map filed in the office of the Clerk of the County of New York on July 19th, 1923.

(Received in evidence and marked City's Exhibit No. 19.)

Mr. La Motte: I offer in evidence the notice of the trial of this case, returnable before this court this morning, with the proof of service on Murray, Prentice & Aldrich, and on James L. Quackenbush.

(Received in evidence and marked City's Exhibit No. 20.)

723 Mr. La Motte: That is all of the preliminary proof. I request the court to view the property at your earliest possible convenience.

The Court: I will view it at once, if counsel are ready to accompany the court.

Mr. Nichols: I am entirely ready, your Honor. I have our engineer, who is very familiar with the road, ever since its construction, and he will be very glad if it is agreeable to all parties, to make such explanations as to the structure as may aid the court.

Mr. La Motte: I have no objection, sir.

The Court: That is agreeable.

Mr. La Motte: Then can we fix a date for trial?

The Court: It is agreeable to me to take it up any date in November. I should be glad to take it up the first day, if you wish; or I will take it up at some later date.

Mr. La Motte: I think we had better have some later day. There is a good deal of work to do.

The Court: Whatever day you agree upon is agreeable to the court. November, bear in mind, has three holidays, so to speak; it has Election Day, Thanksgiving Day and the Friday after
725 Thanksgiving Day. I would prefer to try it during November if I can, because I will be sitting in equity. In December I will be assigned to a Trial part.

Mr. La Motte: Suppose we make it the last week in November?

The Court: That gives you only two or three days. How long a time will the case take to try, in the judgment of counsel?

Mr. Nichols: The case is somewhat novel in its character, and complex in the nature of the proof. It involves a determination not merely of the value
726 of the structure itself, but of the easements which have been acquired, the right of way. Those are appurtenant to a very large number of properties; it presents a question of some novelty and complexity of proof.

Mr. La Motte: Of course, viewing it from the standpoint of the City, which takes the position that the value of easements is absolutely immaterial, I should think the case should be tried in a week.

The Court: I shall not set it down for any later day than the third Monday in November; that is the third week of court.

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Mr. Nichols: Your Honor might find it advisable, after having received proof of the value of the structure and made progress in that manner, and I think we could give assurance that the case would be tried in two or three days as far as that aspect is concerned, to adjourn the hearing to another date. Of course, on the question as to values, there is a great deal of property involving considerable difficulty; but we would try to expedite in every possible way the determination of that. The other matters perhaps might be adjourned to your Honor's convenience, as you have

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indicated that you have other engagements; but I must say, without any desire to exaggerate the time that the case will take, that the matter of easements and the franchise are extremely complex. It took us a great many weeks to determine the value of those easements when we acquired them, at a cost of nearly half a million dollars, actual expenditures.

The Court: The first court week in November begins on the 5th; then there are two solid weeks, the weeks of the 12th and 19th. I think we had better set it down for Monday, the 12th of Novem-

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ber, to be sure to go on. We will leave at once to inspect the property. I will have that attended to right away.

Mr. Nichols: I wish to state to the court, in reference to the matter which came before your Honor on the application for the appointment of the Extraordinary Term, that we at once took the matter up with the Transit Commission, prepared plans, and that I have now a formal application here with our final plans, for the disposition of the situation at Third Avenue arising out of the demo-

lition of the structure and the necessity of providing other facilities there.

Mr. La Motte: That goes to the question of damage.

Mr. Nichols: That of course will be involved in the question of damage, and I think it is only fair to state that it has been our position that that ought to be gotten out of the way as quickly as possible, because you cannot reach a determination of the question of damage until we know just the character of the structure that will take the place
731 of the facilities there, which are quite important. You have got to provide new means of access for 12,000 passengers, and provide for a power cable that is there.

Mr. La Motte: They will all go down in the subway.

The Court: Do I understand that you hope to have that determined and disposed of by the time the case is brought on for trial?

Mr. Nichols: We will make every effort to do so, your Honor.

The Court: Then we will adjourn this until
732 the 12th of November.

Mr. La Motte: How soon do you wish to start to view the property; immediately?

The Court: Yes, we will start immediately.

Upon reflection, I think that the first week of my Equity Term is taken up with naturalization; so that we will start in immediately after the naturalization is over with the trial of this case. That will be in Part V court room, Equity Term.

Adjourned to Monday, November 12th, 1923, at 10:00 o'clock A. M.

Testimony Taken Before Supreme Court. 733

New York, November 12th, 1923.

Before: Hon. James O'Malley, Justice.

Appearances (parties same as before).

Mr. Nichols: If your Honor please, in re the application of the City of New York relative to acquiring title to the elevated railroad structure, etc., in East 42nd Street, the Board of Estimate and Apportionment on October 19th passed two resolutions—

The Court (interposing): I am familiar with the situation, and I understand that there is a 734
motion now coming on in Part I in which an injunction is sought.

Mr. Nichols: Yes, sir.

Mr. LaMotte: We are going to request to have that motion referred to your Honor.

Mr. Nichols: That was our feeling also.

The Court: I think it ought to come here.

Mr. Nichols: We will go in before Judge Cohalan now and ask him to send that motion in to your Honor.

Subsequently counsel appeared and stated that the motion had been referred to Mr. Justice 735
O'Malley.

Adjourned to Tuesday, November 13th, 1923, at 10:15 A. M.

Tuesday, November 13th, 1923.

Trial resumed.

Appearances (parties same as before).

The Court: Gentlemen, you may proceed.

736 Mr. Nichols: If your Honor please, the claimant, the Manhattan Railway Company, is desirous of obtaining with the utmost speed a decision in regard to the injunction proceeding which has been referred to your Honor. We did not wait until the 23rd, at which time becomes effective the direction of the Board of Estimate and Apportionment to tear down the structure which is the subject of this proceeding, but we are very reluctant to proceed in a matter where the very subject of it is ordered to be destroyed. I understand
737 that we cannot merely proceed to argue before your Honor the propriety and the necessity of a temporary stay of the City's action. We desire to have a definite and final determination of the validity of these structures at the very earliest possible moment. It is for the interests of the property owners, who are most concerned in this matter, that the question of the validity of the structure shall be determined without delay so that the City can take title. I do not think anybody wants to rest under the situation in which millions of dollars in values of abutting property are concerned with no explanation whatever as to
738 the grounds upon which these structures are claimed to be illegal. In the absence of any intimation during the existence of these structures for many years, with decisions of our courts sustained by the Court of Appeals that the structure in 42nd Street was erected pursuant to due legislative and municipal authorization, and those decisions having been obtained in condemnation proceedings and in injunction proceedings brought by property owners—and in one of them, the Shaw case, a judgment of $179,000 was obtained, and that case involved the character of the structure,

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the nature of the structure in the street, and one of the contentions raised was that the structure had not been located pursuant to the property owners' consent, and in that case there was a finding of the legality of the structure. The City itself, in a proceeding in which the Court of Appeals examined at great length the nature of our franchise, brought an action to recover a certain percentage upon the net returns of the New York Elevated Railroad, the company which constructed this Third Avenue line and this 42nd Street branch. Under the franchise under which the first 740
elevated railroad in New York was constructed there was a provision contained in the legislative authorization as to the payment of the percentage of the earnings to the City. In 1875 the Legislature passed Chapter 606 of the Laws of 1875, known as the Rapid Transit Act, and under it practically all of the elevated railroads in the City of New York have been constructed. The New York Elevated Railroad, which had then a line extending on the west side of the City from Battery Park north to 59th Street, was the only elevated railroad then in existence, and the condition of the city 741
in respect to rapid transit was deplorable. Efforts had been made for many years to get some form of relief, but without substantial success. Acts had been passed by the Legislature authorizing the New York Elevated Railroad, and its predecessor in title—the Yonkers & West Side Railroad —in 1866, 1867, 1868 and 1875, to do something, but the only result was the construction of a small line on the west side. Then a general act was passed—general in form, the validity of which was sustained by the Court of Appeals in the case of the Mayor *v.* Manhattan Ry. Co., 143 N. Y. 1,

which had for its purpose the extension of the New York Elevated Railroad Company's lines already constructed on the west side of the city through what is known as the Third Avenue route, which includes this 42nd Street spur. There was another company in existence at that time, the Gilbert Elevated Railroad Company, afterwards known as the Metropolitan Company, which had not constructed any road, but which had been granted various routes, and which routes are known as the Sixth Avenue route and the Second
743 Avenue route. The condition, therefore, was that the New York Elevated Railroad Company and the Gilbert Elevated Railroad Company had by the provisions last mentioned pre-empted the available routes in the city, but only one of those companies had undertaken any construction and there was under existing legislation no prospect that there would be any further construction. Therefore, right was given to commissioners to be appointed by the Mayor under the Rapid Transit Act—Chapter 606 of the Laws of 1875—to confer upon the New York Elevated Railroad Com-
744 pany the right to extend on the east side of the city up Third Avenue, including the 42nd Street spur, and the Gilbert Company under new franchises to build upon its route because the old special legislation had not been sufficiently broad to induce the investment of capital; and, as the commission in its report to the Mayor said, to make doubly sure routes were granted to a new company, the Manhattan Railway Company, which embraced substantially all the New York Elevated Company's routes and all the Gilbert Company's routes, so that if those two companies failed to

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avail themselves of the new franchises the Manhattan Railway Company could then itself build the elevated lines. The New York Elevated Company and the Gilbert Company—afterwards the Metropolitan Company—did undertake the construction of lines under this franchise granted by what is called the Mayor's Commission, pursuant to Chapter 606 of the Laws of 1875. The Mayor's Commission under the law was compelled definitely and finally to determine the question whether it was necessary that elevated railroads should be constructed in the City of New York

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within thirty days after their organization, and, on the filing of a petition signed by fifty citizens, it was necessary that action should proceed upon the lines definitely determined upon by the legislature, as far as time was concerned, and within ninety days after organization they must definitely and finally and irrevocably determine the plans for the railroad which thirty days after their organization they must in general approve. On September 2nd, the Mayor's Commission entered into an agreement with the New York Elevated Railroad Company and with the Gilbert Elevated Rail-

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road Company for the bestowal of identical franchises—as is stated in the report of the Commission to the Mayor, in view of the circumstances and the difficulties of obtaining relief from the lack of transit facilities in New York and the brevity of time under which the Commission must act, broad powers and discretion was given to the railroad companies, within proper and prescribed limits. On October 4th the final action was taken by the determination of plans and specifications, which are quite numerous, and which determined the character of the structure, the location of the col-

748 umns and the authorization for stairways and the other portions of the structure.

Later, and in the month of October, the Manhattan Railway Company was granted the same plans and specifications; and it is under those plans and specifications that relief was given to the city and the railroads were built, and, as the Court of Appeals said in the case of the Mayor *v.* M. Ry. Co., it is a source of gratification in view of the novelty of the enterprise that it should finally have succeeded and that having been forced
749 unexpectedly to pay to the abutting owners for the acquisition of the rights of way the elevated railroad had survived. And that the elevated railroads should become prosperous was a matter of public gratification rather than otherwise. It said that the franchise, granted under the circumstances which it recounted with great detail in the decision, were not to be construed narrowly as grants without consideration, but they were franchises in the nature of a contract and were to be construed liberally as contracts granted for consideration. And it is pursuant to that decision of the Court of Appeals that the franchise of the
750 Manhattan Railway Company was consistently and in every instance construed by the court.

The Court: If there is no objection I will ask the representative of the City to state the City's position with respect to this proposition at this time. Let us get down to the preliminary question and dispose of that first.

Mr. LaMotte: On October 19th, the Board of Estimate and Apportionment adopted these resolutions directing the Borough President to order the railroad company to remove the railroad struc-

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ture in 42nd Street as well as the stairway leading down from the station to the street. The railroad company has brought an action to enjoin the city from carrying out this direction of the Board of Estimate and Apportionment, and at the same time asking the Court to grant a temporary stay pending the determination of that suit.

Now, I got the papers in that suit on Monday. I am entitled to a certain length of time in which to file an answer in that suit. But I am perfectly willing, if the attorneys representing the railroad companies are, to stipulate that the averments in 752
that suit are controverted. Then the railroad company can start in with its proof as to its ownership of the structure in the street. If Mr. Nichols, representing the railroad company, wishes this temporary stay, I have no objection provided the stay will not prevent the Board of Estimate and Apportionment from vesting title in this proceeding and proceeding to dispose of the structure pursuant to the directions contained in the charter after the vesting of title. I think that would be a proper solution of the case at the present time. I am not prepared to state the ground upon which 753
the Board of Estimate and Apportionment adopted those resolutions; I really do not know what they are, and I have not had an opportunity to look into the matter.

The Court: It impresses me that we might take up this matter just as we would in the condemnation of city piers—

Mr. LaMotte: It may be after the proofs are submitted by the railroad company that it will appear that those structures are rightfully there; I do not know.

The Court: From the little examination that I

have given to the subject it seems to me that they are. I think, Mr. Nichols, that there ought not to be any trouble of disposing of that question in this proceeding.

Mr. Nichols: No, sir; and I want it disposed of in this proceeding.

The Court: I will grant the injunction, and you may enter an order to that effect.

Mr. LaMotte: In preparing that order may I suggest that it be made clear that it is not to restrain the Board of Estimate and Apportionment
755 from vesting title in the City nor is it intended to restrain the City officials from tearing down the structure after the vesting of title in the City. I understand that the suit is merely to restrain the carrying out of the directions of the Board of Estimate and Apportionment?

Mr. Nichols: That is the primary purpose, to relieve this proceeding from the situation in which it has been placed by the City. But it does seem to me that whatever may be the reasons for this action by the City—and we seem to be speculating upon them rather than discovering what they are—
756 in view of the interests of the property owners, and the absurdity as it seems to me of the position of the City which has brought this proceeding, the City having repeatedly recognized the validity of similar structures in the streets, and I maintain that there cannot be anything better settled than the legality of these structures—it does seem to me that we ought to remove this cloud upon our title here, and I think it is very reasonable that we should proceed and have a determination definitely of this question of the legality of the structure. I am not speaking for the property

owners, but I do not see how the City can take title here. 757

Mr. Page: As counsel for the property owners, may I say this. Mr. LaMotte's suggestion is that a stipulation be entered into putting the case at issue and that a stay be granted, and then in the condemnation proceeding this issue can be determined first if they want it, but in the ordinary course if your Honor should in the injunction proceeding find the structure legally there the condemnation would be of a legal structure, or if you found it legally there the condemnation proceeding would 758 go on just the same. Now, this is the stipulation that has been suggested, and I think if your Honor will read it you will see that it goes at once to the merits (handing paper to the Court).

Mr. Nichols: The order that we propose would be simply to grant the stay. I have been unable to get any statement from the City as to why they claim that our structure is illegal. I want the case tried at this time—

The Court: You want the case tried now.

Mr. Nichols: Yes, sir. But I do not want to proceed with that cloud upon our title. 759

Mr. LaMotte: It seems to me that your Honor has the right to dispose of this temporary injunction in the way we suggest.

Mr. Page: The motion papers ask for this order and the complaint asks for any other or further relief which to the Court may seem proper. So that the City can go ahead anyway.

The Court: Then why do you need this statement in your order?

Mr. LaMotte: After a restraining order is entered it may be construed to prevent the removal of this structure after the vesting of title. All

that the railroad company asks, as I understand it, is to prevent the City officials from following out the direction of the Board of Estimate and Apportionment and removing this structure as an illegal structure. Now, when that order is entered we want it to appear clearly that it is not intended to restrain the Board of Estimate and Apportionment from vesting title in the City or the City officials from removing the structure, either by sale or by destruction, after the vesting of title pursuant to the provisions of the charter.

761 The Court: I see the force of your position, but I think I will sign this order, and, with respect to the action I will hear it as we go along in this proceeding if there is to be any proof offered on it; and you may consider both actions as being tried together. Is that satisfactory?

Mr. Nichols: That is very satisfactory to us; that is just what we want.

Mr. LaMotte: We are satisfied with that.

The Court: Motion granted; order signed.

There is no question raised about the regularity of this matter coming before the Extraordinary Term, is there?

762 Mr. Nichols: No, sir.

Mr. LaMotte: I do not think so. I think under the order of the Governor your Honor has the right to consider this.

The Court: Very well. Now, proceed with the case.

Mr. Nichols: I have a list of documents here which we propose to put in evidence. First, a compilation of the organization, the franchises, and the contracts, of these companies, and second, a compilation of statutes and documents. We have used these in the trial of cases in countless in-

stances. However, perhaps this is not sufficiently complete for the purposes of this trial, and there are numerous references to the organization papers; but I do not suppose the representative of the City will make any objection to my putting in all the public documents and statutes referred to in these compilations?

Mr. LaMotte: You are going to offer them in evidence in the order in which they appear?

Mr. Nichols: Yes.

Mr. LaMotte: We have no objection at all.

Mr. Nichols: First I will offer in evidence the 764
volume entitled: "Manhattan Railway Company. Organization. Franchises. Contracts." Dated January 1, 1918. Volumes I and II.

(Received in evidence and marked Claimants' Exhibit A.)

I also offer in evidence the volume entitled "Statutes and Documents affecting the elevated railways in the City of New York," and more particularly the statutes and documents referred to in a schedule entitled, "In re 42nd Street Spur. Documentary Proof of Title."

(Received in evidence and marked Claimants' 765
Exhibit B.)

I next offer in evidence volume entitled: "Statutes and documents affecting the elevated railways in the City of New York." What I have just had marked is the schedule.

Mr. LaMotte: What part of this statement do they take in?

Mr. Nichols: They are the documents and statutes referred to in the second column of Claimants' Exhibit B under the heading "Statutes and Documents."

766 (Received in evidence and marked Claimants' Exhibit C.)

I wish to call the attention of the Court—without further argument of a general character but so that the evidence of our engineers may be understood in relation to the franchise matter—to the fact that the authorization granted under the New York Company's franchise, which was the one that the Court of Appeals held applicable, and under which the construction proceeded, and also of the Manhattan Railway Company, which afterwards acquired by merger the New York Company, the 52nd of the plans and specifications adopted by the Mayor's Commission on October 4th, 1875, is as follows:

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"Authority is given for the construction of such supports, etc., etc., station buildings, platforms, stairways, telegraph and section devices, and such other requisite appliances, upon the route or routes and in the locations determined by the commissioners, as shall be proper for the purposes of rapid transit railways, and as shall be necessary to meet the requirements of the travelling public."

768 That authorization is and necessarily had to be of a general character so as to provide for facilities for the traveling public. The Governor's Commission had become functus officio when we had determined this. But the suit was expected to develop especially along the line of the construction of these new facilities as it has developed and no provision could be made for the exact and permanent location of stations, particularly of stairways, without of course precluding that provision on account of the change which inevitably would be necessary to provide for the growth of the City, the changes in traffic and the localities of traffic.

That matter has been decided in a case related to similar franchises of the Brooklyn elevated railroad and the legality of this authorization has been sustained; the stairways and stations have been provided from time to time, and stairways provided in condemnation proceedings in which the question of the legality of the authorization necessarily was at issue without in any case the slightest question ever having been raised as to the legality and the duty of the company to provide facilities wherever necessary and to so locate its stairways and stations as that they might be convenient to the public, in the language of the authorization. The stairways in 42nd Street have been relocated as the traffic and as conditions changed; the plans were approved by the Commission acting under the franchise authorization to the New York Company—the one under which the west side routes were built, and they show the station, the stairways symmetrically located, one on the north side, and one on the south side, at Park Avenue, and later a connection was made over the sidewalk to the New York Central Railroad Station, and that connection remained there for some years until the New York Central found that it was not desirable to have that entrance continued, and the stairway was then placed in the street where it is now—except that the elevated railroad formerly extended into Park Avenue on its original franchise—and then the station was reconstructed, the viaduct in Park Avenue was built, as your Honor knows, across 42nd Street—

The Court: Do I understand that no part of the structure is now in Park Avenue?

Mr. Nichols: The station itself does run down into Park Avenue, but formerly there was a much

larger station in Park Avenue. The elevated railroad cut off the end projecting into Park Avenue so that it would not interfere with the viaduct. I think about seven feet of the stairway extends into Park Avenue, but our franchise would permit us to cross Park Avenue.

The location of the columns, for the same reasons that have been referred to, was made general in character. The plans and specifications under which they were built provides, for instance, that where the width of the streets between curbs is
773 55 feet or more the plans of the construction shall be as follows, as the company constructing the railway shall elect: First, they may run columns along the line of each curb, and then a superstructure spanning the street—and that has not been done in any street, because if we were to put the columns along the curb 55 feet apart it would require so heavy a structure over the center of the street as to obscure abutting properties. The Legislature passed a bill, very ill-advisedly, in the last days of the session, a bill not corresponding to anything that the City or anybody wanted, to relocate the
774 columns in upper Sixth Avenue along the curb stone, exactly as is directed by this order of the Board of Estimate and Apportionment, and the property owners knowing that would mean a six foot girder spanning the street, which would render the street a sort of cave underneath the structure, are opposing it vigorously. There was a meeting at the Hotel McAlpin last week at which were present representatives of the Gimbels, the President of the Greenwich Bank, a representative of the Hotel McAlpin, and other indignant citizens, who were determined that the street should not be ruined by any such outrageous construction as

775 moving the columns on to the sidewalk. And for that very reason the Commissioners appointed by the general term to give the statutory authorization to routes advised and recommended that whenever possible the columns should be placed not on the sidewalk or on the curb, but in the street; and that is exactly what has been done on Third Avenue and in 42nd Street.

The Court: Why were they placed so close to the curb in this instance? That is a rather unusual situation there in 42nd Street, isn't it?

776 Mr. Nichols: I think they are a little nearer there than in Third Avenue, but the width of the sidewalk and other conditions there governed that.

The Court: I thought perhaps there were some special reasons for putting them where they are in 42nd Street.

Mr. Nichols: I do not really know why that was done. There was a question whether the New York Elevated Railroad constructed under the old special franchise or the new franchise, which, in Section 36, provided that any railroad already owning and operating a line should have the benefit of the new franchise could construct under the 777 terms and conditions of its old franchise; there was some confusion in the terms of the act which was considered at length by the Court of Appeals and it was finally decided that it was constructed under the Rapid Transit Act and not under the old special franchise. Of course, your Honor must recognize that at the time this structure was built 42nd Street was not the street that it is today. There were four methods, one of which the company could elect. It could elect to put them in the street for the reasons that I have stated. We followed this authorization in Second Avenue and

in Third Avenue and it has never been questioned. It is a very important matter to us that there should be no question at this time, or at any time in the future, about our franchise authorization.

Referring briefly to the evidence that is concerned in Claimants' Exhibit A and in Claimants' Exhibit C, there is there the special authorization that I have referred to. I then have the proceedings of the Board of Rapid Transit Commissioners, under Chapter 606 of the Laws of 1875. The proceedings were at length. The problem was a difficult one. 779 There are opinions of counsel and opinions of courts, expressed to the Mayor, etc., which are important as bearing on the breadth of the intent under which these provisions were framed and the necessities and the desire to induce as a result of a real contract with the company the construction of these roads. The matter is very fully discussed by the Court of Appeals in the case of the Mayor *v.* The Manhattan Railway Company, and I do not think it necessary to refer further to these matters except to call attention to the fact that the report of the Commission appointed by the general term to give the statutory consent was affirmed by the Court of Appeals in 70 N. Y., page 780 327, which is again a very exhaustive consideration of these franchises.

I have offered in evidence the proceeding giving the consent, which, among others, includes the report of the commission advising exactly the form of location of columns that has been adopted. In order to avoid any confusion as to our position I will take item No. 8 in this schedule:

"Report of the Governor's Commission, Decem-

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ber 30, 1879, approving the east side lines of the New York Elevated Railway."

As the Court of Appeals held, the lines were not constructed under the acts pursuant to which this commission was appointed; but there being doubt about it, it was not finally settled until the decision of the Court of Appeals in the Tax matter in 1894. The commissioners did in good faith proceed, as was their duty under the act, to approve the routes. That as the contemporaneous interpretation is of course of value for whatever it is worth, and it does show the map which they approved, 782
and their signatures show what was done in 42nd Street. The columns were as they are now, all except three columns which have been relocated on account of the convenience of the N. Y. Central station. The City itself approved this franchise, as it was compelled to do under the act, and, as I have said, in the proceedings to recover the five per cent. of the net earnings from the New York Company it made a sworn declaration that these very franchises were valid. The lease of the New York Elevated Company to the Manhattan Railway Company is included, and the merger which 783
followed in 1890. Since that time the total structure has been in the Manhattan Company, and the property was leased to the Interborough Company, also a claimant here, on January 1st, 1903, and that lease has been put in evidence.

That completes substantially our proofs of title. Our reliance is upon the judicial interpretation and decision on these matters and in the absence of any special ground of attack by the City I feel that it is not necessary to go into this proof any further.

Mr. Page: May I suggest one thing to Mr. Nich-

ols. As I understand it the railroad in 42nd Street was built pursuant to the authority, as explained by Mr. Nichols, and in the course of that a map was filed which shows the physical location in the street of the columns and the stairways. I think if that map was presented to the Court it would give a picture of the construction as it was when the railroad was built in 1879. You then have the damage map which you can compare with it showing how the structure is today.

The Court: Mr. LaMotte, I do not understand
785 that there is any contention on the part of the City that the claimant is not vested with title through franchise?

Mr. LaMotte: No. That is, a special franchise. The only question is as to the proper location of the columns and the stairways leading from the stations down to the sidewalk. Of course, if the City has the right to cause the removal of those stairways it will affect the value of the structure. As I understand it, we are not contesting the special franchise of the railroad at all. The plan that Mr. Page speaks of is a plan according to
786 which the railroad structure and the stairways were first constructed. Subsequently to that time the stairway was altered so as to make a connection with the railroad station, and when the new railroad station was built the stairway was put back on the street in an entirely different location. Now, of course that raises the question as to where the authority is by which the railroad authorized the placing of the stairway in an entirely different position from where it was at the time the company had authority to build the railroad.

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The Court: Of course, that would affect only one feature, which is the stairway.

Mr. Nichols: Let me say, to clear up that situation that the elevated railroad was not built pursuant to any plans or any definite location. In fact, the exact contrary is true, because there must be some fluidity, some elasticity, about a franchise. A cast iron franchise would be so absurd that I do not think you need bother about arguing it. We rest not on any map, and this map that is referred to has nothing to do with our franchise whatever. As the Court of Appeals held, this road 788
was not built under the acts of 1866, 1867, 1868 and 1875, which resulted in the construction of the 9th Avenue line south of 61st Street; but the same company, under the new franchise granted by the so-called Rapid Transit Act of 1875 did construct this Third Avenue line. And that is the reason that it was not held to be subject to this five per cent. tax, because that related to structures built under the old franchise.

Now, the Commissioners under the old franchise, which was held by the Court of Appeals not to apply to the structures on the east side of the 789
city, did on December 30th, 1879, after the road was constructed and in operation, inspect it and approved its location and operation by virtue of a map. That map is of interest merely as showing that the structure was up there as it is now, and I will offer that in evidence. It is entitled: "Plan showing the route of the New York Elevated Company in 42nd Street between Third Avenue and the Grand Central Railroad, together with the locations of columns, tracks, turnouts, stations, platforms, stairways. Plan and map approved as per resolution of this date, December 30 A. D.

1879." This is signed by Commissioners James Matthews, J. S. Freer and F. J. Fithian."

The Court: Were those City Commissioners?

Mr. Nichols: No. Those were the Commissioners appointed by the Governor's Commission, so-called, under the old franchise. I offer the original map in evidence, but I will substitute later a blueprint for it.

(Received in evidence and marked Claimants' Exhibit D.)

I will show just how the railroad was con-
791 structed by our engineers. I am only putting this in evidence because it has been referred to by counsel for the property owners. But I do not want to be misunderstood: It does not form any part of our franchise authorization.

Mr. Page: This is the plan referred to in the resolution which you put in evidence.

Mr. Nichols: Yes. The resolution referred to on the plan and to which the plan should be attached states: We approve of the branch road running on 42nd Street from its intersection with Third Avenue to the Grand Central Depot. This
792 was done, as the resolution states, pursuant to a resolution of the New York Elevated Railroad Company dated December 5, 1878, and this refers to the statutes under which the commissioners at that time believed, in good faith of course, that they were acting. There was doubt as to which franchise was active, and in order that they should be fully protected the companies themselves asked for this inspection and approval and it was had; but it turned out afterwards that it had very little bearing upon the franchises except a contemporaneous view of the situation.

I offer in evidence the resolutions of the Board

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of Estimate and Apportionment, dated October 19, 1923, referring respectively to the removal of the stairway at Park Avenue and the removal of the columns.

(Received in evidence and marked Claimants' Exhibits E and F respectively.)

Mr. LaMotte: Are you not going to put in the notices?

Mr. Nichols: Notices were served upon us and the time has begun to run and will expire on the 23rd of this month.

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I think I ought to refer to a matter which has occasioned some difficulty in my mind. That is the necessity of further action on the part of the Rapid Transit Commission. I do not think it is fully perceived from the confused, and in fact contradictory, legislation under which we are now acting. Section 1 of this act is in the same form that it was in 1917 and in 1919. The original act of 1917 has been amended twice, namely, in 1919 and in 1923; but there has been no amendment or change of Section 1. That provision that the condemnation shall reserve to the elevated railroad the right, and retaining the obligation, to restore

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the elevated railroad if it shall be deemed necessary. And the Public Service Commission is charged with the duty of determining the terms and conditions under which this restoration shall take place. Now this franchise cannot be lifted up in the air over 42nd Street, and we do not know what changes are to be made in that street and what conditions are going to be there in the future, and it is a matter of great embarrassment to the company to proceed on the theory that this structure is not being extinguished. Under the lan-

guage of the act the condemnation is to leave in existence the franchise and the obligation to restore the structure. We have right here this morning the situation of the City ordering us to rebuild the road, precisely as though they were ordering us to construct it anew. Because it would cost us more to take down this structure and rebuilt it than it would be to build a new railroad structure there. And I have taken the responsibility on behalf of the Interborough Rapid Transit Company of presenting a formal petition
797 to the Rapid Transit Commission asking for such a determination as is possible in the way of clearing up the situation.

The Court: Isn't it possible to secure some action on the part of the Rapid Transit Commission now? They know that this case is on trial. Mr. LaMotte, have you been in touch with the Rapid Transit Commission at all about it?

Mr. LaMotte: No, sir; we have not.

Mr. Page: I have, your Honor. For several weeks some two months ago a representative of the Interborough Company presented an informal
798 plan for a readjustment of the station at 42nd Street and Third Avenue involving some changes as they should be made after this structure should be taken down. I understand from what Mr. Nichols says now that they presented a petition to the Rapid Transit Commission on that subject.

Mr. Nichols: I presented in my petition every aspect in which I thought clarification was needed. But that is not all that I have done by any means. If this matter proceeds and the City takes down this structure that will necessitate taking down the station at Third Avenue, taking down the stairway, because as it is it will be impossible for

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12,000 people daily to get access up or down from the Third Avenue station, and certainly something must be done in the way of affording alternative facilities for that number of persons. The five cent travelers have been too little considered. We are looking out for these travelers, and we do not like the idea of the City not having made an application to the Rapid Transit Commission which the statute clearly provides that it should make and getting some plan for affording proper facilities.

The Court: No doubt the Public Service Com- 800
mission will act upon your petition.

Mr. LaMotte: My position is that this has nothing to do with any proof of damages. The act specifically prescribes the area in 42nd Street, in which this structure is situated, that we are to take, and the proof can proceed only upon the theory of what is being taken in this proceeding. There is this exception in the act:

"Nothing in this act shall be deemed to impair any of the existing franchises of the Manhattan Railway Company to construct and maintain such facilities, including stairways immediately adja- 801
cent to its Third Avenue station at 42nd Street, as the Transit Commission may determine to be necessary."

Now, we take this structure subject to the right of the railroad company to obtain permission from the Rapid Transit Commission to construct whatever is necessary in connection with its Third Avenue station.

This very question was raised by Mr. Nichols in his opposition to this condemnation, and Judge Bijur decided that there was no reason why this case should not go on. Mr. Nichols has taken an

appeal from that decision, and that appeal has not been argued.

The Court: I do not think there is any opposition on the part of Mr. Nichols to going on now.

Mr. LaMotte: The legal objection to proceeding has been disposed of by the order made on the motion to condemn.

The Court: I do not understand that Mr. Nichols is opposing proceeding now, but is simply calling this to the attention of the court with a view of getting a determination by the Transit Commis-

803 sion.

Mr. Nichols: Precisely. I think that is absolutely necessary—not after the City takes title, but now. The Third Avenue station would be without any support on its south side, and there would not be the platform space necessary.

The Court: Of course until the City removes the structure you have the present facilities, and as soon as they do remove it then if you believe that you are entitled to have this provision made in advance you could enjoin them from tearing the structure down until the Transit Commission

804 had acted.

Mr. Nichols: That is true, your Honor.

The Court: The question is what can this Court do in connection with the matter. We can go ahead and ascertain what the damages are to be.

Mr. Nichols: It will be difficult to know what the damages are until we know what is involved in this proceeding. This enabling legislation makes the determination of the Transit Commission a jurisdictional requirement for this procedure.

The Court: Are you referring now to the Act?

Mr. Nichols: Yes, sir. First the consent of the

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Transit Commission must be obtained, and only such structure shall be removed, or such franchise taken, as the Transit Commission shall find to be necessary; and then upon the giving of their certificate the City may do certain things.

Mr. La Motte: That was given.

Mr. Nichols: That was before this act was passed. The act as it was framed required the Transit Commission to determine whether the elevated structure in 42nd Street, or any portion of it, should be removed. Before this act was passed in its present form the Transit Commission did 806
have a hearing and they did find that all the structures in 42nd Street should be removed.

Mr. LaMotte: Only what they call the spur.

Mr. Nichols: No, there was no qualification at all. "All structures." That was the simple child-like language, the all-embracing language. The opinion said that they did not intend to interfere with the operation of the Third Avenue line, but they did not put that qualification in the certificate which the statute makes an essential to condemnation.

That is the way it stood until last year. The 807
City recognized that it could not go ahead with that breadth of condemnation, and they did not get a redetermination by the Transit Commission, but they went to the Legislature, and, at my suggestion, words were put in so as to show what was really the purpose: that the power of condemnation should be of the structures that constituted the spur. Coupled with that was the suggestion that the Transit Commission might define, and waiving all objections to the fact that there was a time limit in which they must act, and they substantially did act on the merits of the situation.

808 I have no intention to raise a technical point, that their determination pursuant to the statute ended within the thirty days to which they were limited, but I insist that they must do something. They must define what is meant by the "spur." I am perfectly willing to accept this area of condemnation as a basis of that definition, but I want this language defined when it says anything within this area by metes and bounds limited to the clause "constituting the 42nd Street spur." There is a great deal in there that is not the 42nd Street spur.

809 This area sticks out into Third Avenue.

Now, we feel that the City is required by the statute to go before the Transit Commission and have this determination made in the interests of orderly procedure in order that there shall not be further years of delay, and we do not want to be chargeable with not having done all that we could to help out the situation. I think there is a defect that can be cured by the Transit Commission, and it should be cured. We have made a petition to the Commission to that effect, and we have tried to make it as complete and as full as possible.

810 Mr. LaMotte: Let me understand just what it is that you are asking for now. Is it your idea that you do not want to proceed with your proof until your petition has been acted upon by the Rapid Transit Commission?

Mr. Nichols: No, sir. I do not care to proceed further without calling attention to this situation; that is all.

Mr. LaMotte: Of course, I do not agree with all that Mr. Nichols has said. The whole question before the Transit Commission at that time was as to the 42nd Street spur. The mere fact that in

their order they did not cover the station connected with the Third Avenue elevated in 42nd Street does not mean that they intended that that station was not necessary as a public convenience. The whole proceeding related to this particular spur, and not to the station of the Third Avenue elevated. 811

Mr. Nichols: But this damage area does relate to that station.

Mr. LaMotte: It relates only to the support of a part of the station. The act under which we are proceeding gives the Transit Commission the right to determine what is necessary to be placed in the street to protect that Third Avenue station. 812

Mr. Nichols: I am not animadverting upon the intentions of the Transit Commission, but this is a technical proceeding; it is the condemnation of property devoted to a public use, and I contend that where the legislature makes a certificate of the Rapid Transit Commission the jurisdictional basis of this procedure it becomes a serious question when it is left to vague interpretation.

The Court: I suppose as a practical matter the City would not remove that structure without leaving some facilities there, taking the worst possible view of it. 813

WILLIAM F. REEVES, called as a witness by the Claimants, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. Where do you reside? A. No. 9 West 67th Street, New York City.

Q. What is your business? A. Civil engineer.

Q. How long have you been in the employ of the Manhattan Elevated Railway Company and the

814 Interborough Rapid Transit Company? A. Since they were incorporated, each of them.

Q. Have you been familiar with the structures of the Manhattan Railway Company, including the Third Avenue line and the 42nd Street spur, since their construction? A. Yes, sir.

Q. Have you testified in cases relating to the abutting damage on 42nd Street on the line of this spur? A. I have.

Q. And made yourself familiar with the history of the location of the structures and columns? A. I
815 have.

Q. Were you familiar with the structure as it was originally erected? A. Yes, sir.

Q. You have been connected with the company since when? A. I came into the elevated railroad business in March, 1879, when they were building the Second Avenue Elevated Railroad; I began there as a tool box boy in the erection of the Second Avenue line, and I have been connected with the Rapid Transit proposition both in construction and operation ever since. Previous to that time I had knowledge of what was going on in the City of New York in the way of elevated
816 railroad construction because I have lived here all my life, I was born here, and I have followed that trend of business ever since I was able to think really.

Q. Have you been particularly engaged in the study of elevated railroad structures and traffic? A. Yes, sir.

Q. Ever since you formed your connection with the company, or shortly thereafter? A. Yes, sir.

Q. And you have testified in many of these cases? A. Yes; I think in about four thousand cases.

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Q. And you have testified often for plaintiffs? A. Yes, sir.

Q. Now, will you describe the structure as it was first erected, giving the dates as nearly as you can recollect them? A. The preliminary surveys for the erection of the spur took place in the latter part of 1875 and in 1876, and they began the erection of the road about 1877, and it was finished and operated August 26th, 1878. At that time the spur was part of the main line of the Third Avenue elevated road which came up from Chatham Square and they operated trains right through from the main line up to the Grand Central Depot over this spur. The structure as it was erected then was practically what it is today. The columns were located in the roadway of the street seven or eight feet distant from both the north and the south curb lines, and those columns were built of brick and were sunk eight or ten feet below the surface of the street; they had dimensions of 10 feet square at the bottom tapering to about 4½ feet square at the top. These supported castings on which the columns rested. The columns are of wrought iron, fan-top columns, which support the lattice girders which support the roadbed and rails on which trains run.

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There was a station at 42nd Street and Park Avenue, which was erected and operated at the time the road was first opened. That station and its stairways and its general location and its connection with the Third Avenue end is all illustrated on the map which was signed by the so-called Governor's Commission which you have talked about here in the discussion.

Q. And which map we have placed in evidence today? A. Yes, sir.

820 *Claimants' Witness—William F. Reeves—Direct.*

By the Court:

Q. Do I understand that this spur was erected before the Second Avenue line? A. No, sir. The Second Avenue line was erected. That began in February, 1879, and operated March 1st, 1880, and it ran up from Chatham Square to 42nd Street, and they were building the section at 42nd Street at the time this 42nd Street spur was opened.

By Mr. Nichols:

Q. Will you describe the station as it was first
821 erected, including the stairway? A. As first erected its location was practically the same as it is today, but they had at that time two stairways from the station building, one on the north side of the street and one on the south side of the street, coming down to the respective sidewalks, and extending east along 42nd Street.

After the road had been in operation for some time, a few months, the direct routing of the trains from Third Avenue across into 42nd Street was discontinued and the line in 42nd Street was then made a shuttle line, extending from Third Avenue
822 to Fourth or Park Avenue. The stairway and station erected at the Park Avenue end is in substantially the same location today, although certain changes have been made in the interior of the station, and certain changes have been made by connecting the station with the Grand Central Depot. That was about 1886. At that time the stairway on the north side of the street was removed and the columns shifted to the curb line to act as a support for the station extended, and leading into the Grand Central Depot.

The stairway then leading down to the street, when that connection was made, was transferred

into the interior of the Grand Central Depot, and it was located about where Depew Place was at that time.

The stairway on the south side of the street was closed to traffic about June, 1889, and continued not in use until about May, 1890, when it was removed from the street entirely.

So at that time there was only one connection to the street—on the north side through the Grand Central Depot by this stairway down into Depew Place.

Q. It is almost universal to have these stairways 824
go down from the station to the street, is it not? A. Yes, sir.

Q. Has that been found most convenient for the public, to come directly up into the station? A. Yes, sir.

Q. Are there any instances in which the connection through or with adjoining buildings have been made? A. Yes, sir.

Q. Are they numerous? A. Yes, sir.

Q. How many of them are there? A. Roughly speaking, I should say at least a dozen of them.

Q. About how many stations are there altogether? A. Of the Manhattan system, about 128. 825

Q. Where is the densest traffic, speaking of the north and south sides of a street? A. At the north side.

By the Court:

Q. Will you describe the Manhattan system? A. The entire Manhattan system?

Q. Yes; the Manhattan system? A. The Manhattan system acquired all the rights of the New York Elevated Railroad Company, the Metropolitan Railway Company, and the Gilbert Elevated

826 Railroad Company, and it owns and operates the east side lines going up Second and Third Avenues and the west side lines going up Sixth and Ninth Avenues. It owns all the elevated railroad structure on Manhattan Island, and together with the Interborough Company, owns all the extensions up in the Bronx.

By Mr. Nichols:

Q. Just describe it a little more fully? A. On the east side of Manhattan the lines belonging now
827 to the Manhattan Company and the Interborough Company, which is operating it, starts from South Ferry and extends north through Front Street and Coenties Slip, and Pearl Street, up to Chatham Square and the Bowery and up the Bowery to Third Avenue and through Third Avenue to 129th Street, and there connects with the suburban lines which they acquired later—about 1889 or 1890; and that line extended goes up through the Bronx through private property to 145th Street, and through Third Avenue to Fordham Road. In 1917 there was an extension built by the Interborough Company up Webster Avenue to Gun Hill Road,
828 and there connected with the City built line at the easterly end of Gun Hill Road.

The Second Avenue line today, since 1917, began its operation from the City Hall, which was a branch line of the Third Avenue road built in 1879 and 1880, and the Second Avenue line operates the City Hall Branch up to Chatham Square, then through Division Street and through Allen Street to First Avenue, and up First Avenue to 23rd Street, through 23rd Street to Second Avenue, and up Second Avenue to 129th Street, and then continues on over the bridge by a double deck

structure, following the line of the Third Avenue road, to 143rd Street, and then diverts easterly to Bergen Avenue and Willis Avenue, and then connects with the City built line at Brook Avenue and Westchester Avenue.

Now the west side line extends on the west side of the city similarly to a connection with the City built elevated line.

Q. There has been a shuttle service on the 42nd Street spur since 1879? A. Yes, sir.

Q. Was the line on Third Avenue constructed in sections; that is, perhaps a mile or so built and opened up; and then from 42nd Street up to 86th Street, and so on? A. Yes, sir.

Q. So that at first it was constructed up to 42nd Street and operated up to there, and then through the spur over to Park Avenue? A. Yes, sir.

Q. And afterwards when it was constructed north of 42nd Street the through operation over the spur was abandoned? A. Yes, sir.

Q. What relation would the attempt to operate trains on the spur, crossing or connecting with the main track at grade, the track through Third Avenue, have? A. Why, a grade crossing would be there, which is prohibited in the practical operation of a railroad line. A grade crossing is always dangerous.

Q. You mean that it would require a grade crossing which is not permissible in safe railway operation? A. Yes, sir.

By the Court:

Q. What do you mean by a grade crossing? A. If the line was continued to the Grand Central Station all trains coming north on the northbound track of the Third Avenue line going to the Grand

832 *Claimants' Witness—William F. Reeves—Direct.*

Central Station would have to cross in front of trains coming south on the Third Avenue line.

By Mr. Nichols:

Q. There was an accident there, was there not? A. Yes, sir; there was an accident there about February, 1879, which was taken up by the City authorities, and the running of the train was diverted so as to make the Third Avenue a through line, throwing the 42nd Street spur into a shuttle.

Q. There is a spur operation of the subway be-
833 tween the east and west side subways at 42nd Street, is there not? A. Yes, sir.

Q. And like subway operation in other parts of the city? A. Yes, sir.

Q. There is spur operation on the elevated line and on the subway line both? A. Yes, sir.

Q. And does that in your opinion give proper and adequate service?

Mr. LaMotte: Objected to as immaterial, irrelevant and incompetent.

The Court: Under the circumstances, I will allow the question.

Mr. LaMotte: Exception.

834 A. Yes, sir.

Q. What connections can be made through the subway with the elevated lines in the City of New York without a transfer? A. Coming east from the 42nd Street end of the spur a passenger may transfer at the Third Avenue end and take a downtown train, and through a sub-grade bridge may go over to the northbound platform; that is for local service, or a passenger may go upstairs for express service. Those lines continue on south from 42nd Street, and a passenger may go to South Ferry and go around what we call "the

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horn" and up on the west side into the Bronx and on to the City built line which extends northward; or a passenger may go north from South Ferry on the Third Avenue line up into the Bronx and out over the City built lines into the Bronx either north or east to Pelham Bay and other sections.

Q. When was the express track put in on the Third Avenue line? A. About 1917—that is, the tracks as they are today. We had express service before that, but only in a meagre way—not as we have it today. We changed to the present condition in 1917.

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Q. There was a middle track north of 42nd Street? A. Yes, sir.

Q. But none south of 42nd Street? A. Between 42nd Street and 14th Street there was no middle track at all to speak of.

Q. So that all the trains had to be thrown upon a single track? A. Yes, sir.

Q. The express track now runs where? A. From the City Hall right up to Fordham Road in the Bronx.

Q. That is a through express service without grade crossings or any interference, is it? A. Yes, sir.

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Q. Was there provided station facilities at the terminus to take care of this express service? A. Yes, sir.

Q. A double track in Third Avenue and a new bridge over the Harlem River? A. A double deck bridge to meet the requirements of the express service, and to meet the double track system down through Second and Third Avenues.

Q. And that added about fifty per cent. to the capacity of the Third Avenue line, did it? A. Yes, sir.

838 *Claimants' Witness—William F. Reeves—Direct.*

Q. And transfer to that express service is free at Third Avenue and 42nd Street, is it not? A. It is.

Q. The elevated railroad lines have been operated by electricity since what time? A. Since 1902.

Q. Are there any other changes either in structure or in operation in respect to the 42nd Street spur that you have not mentioned? A. I do not think of any now. There may be some minor track changes and the changes which I have spoken of as to the interior of stations and the relocating of
839 stairways. I do not know of any other changes, and the structure is substantially the same today as it was.

Q. Where does the foot of the Park Avenue stairway come down? A. On the north sidewalk about thirty feet west of the westerly station line.

Q. That is, it extends about thirty feet? A. Yes, sir.

Q. And how far does it go into Park Avenue? A. I should say the station extends seven or eight feet into the line of Park Avenue and the stairway about thirty feet further. That is, about 38 feet
840 west of the east line of Park Avenue prolonged.

Q. How far did the railroad, when first constructed, extend into Park Avenue? A. The same as it does now without this spur.

By the Court:

Q. Didn't it extend further? A. No, sir. Originally the station ran down about eight feet west of the east side of Park Avenue.

By Mr. Nichols:

Q. Hasn't there been some portion of the station inside of the Park Avenue line west of the

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track been removed so as to make more room for the viaduct? A. No, sir. The stairway itself, which extended about seventy feet over the station line, was in the way of the viaduct, and that led to a bridge at the upper end of our station, but when the viaduct was built the bridge was taken away and the stairway relocated and brought further east where it is today.

Q. How far back was the station and the canopy moved? A. I think about 70 feet. That is my recollection off-hand.

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Q. Are you familiar with the damage map in this case? A. I am.

Q. I show you a copy of the draft Damage Map, dated December 28, 1921. The damage map itself has been marked Petitioner's Exhibit 19. This is a copy of it. Will you state what structures inside the area of condemnation are necessary for the maintenance of the Third Avenue Elevated line in view of the demolition of this spur? A. The structure at the easterly end of 42nd Street, which may be described as Bent No. 1.

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Q. You mean by bent the span between columns? A. Yes, sir; including the columns. That is necessary for the support of the station. The column on the westerly curb of Third Avenue is also necessary for the support of the southerly end of the present Third Avenue station. That is indicated on this map as being within the damage area. The girders which partly support the station are also within the damage area.

By Mr. LaMotte:

Q. How many columns are there within the damage area that are necessary to support the station?

844 *Claimants' Witness—William F. Reeves—Direct.*

A. Three altogether. One on Third Avenue and the two constituting Bent No. 1.

By Mr. Nichols:

Q. When the spur is removed passengers now reaching the Third Avenue Line by the spur will gain access to the Third Avenue Line how? A. By stairways that lead up from the street at the Third Avenue end.

Q. What will be necessary to accommodate the increased number of passengers that will come over and take the Third Avenue line when this spur is down?

845 Mr. LaMotte: Objected to. He has not shown how many passengers will come over and take the Third Avenue line.

The Court: Assume that any will.

A. Assuming that additional facilities must be afforded for passengers that would formerly have gotten on at the station at Park Avenue, a new stairway would have to be provided on the south side of 42nd Street, maintaining the old station on the north side of the street.

846 Mr. LaMotte: That is assuming that all the passengers which might get on at the Park Avenue end go over to Third Avenue to get on the road.

The Court: That is one assumption. Of course, the witness is simply basing his opinion upon certain conditions which if all those passengers did come over would necessitate more facilities than there are there at present.

The Witness: Yes, sir; and twice as many will come over after 42nd Street grows, and then we will have to have more facilities.

Q. Having regard to all the circumstances and the growth of traffic there at the rate of eleven per

cent. at the present time what additional stairway facilities do you think are necessary?

Mr. LaMotte: I object to that question as indefinite.

The Court: Mr. Nichols, where do you get the 11 per cent.?

Mr. Nichols: I mean as comparing what the traffic on the spur was for the last year.

The Court: I think we should have a few more facts.

Q. What are the number of passengers that use the spur now? A. 12,000 a day according to a 848
check made at the westerly end of the spur, but that does not indicate the amount of the travel because passengers coming west are not indicated by the number of passengers going the other way because they get free transfer.

Q. The line of traffic is to the north? A. Yes, sir.

Q. And as the passengers come east in the morning they merely cross the platform to reach the shuttle train which is on the same level? A. Yes, sir.

Q. And the traffic during the day is that traf- 849
fic coming from the north which can reach and use the shuttle service at the same level most conveniently? A. Yes, sir.

Q. You are familiar with the proceedings before the Transit Commission, are you not? A. Yes, sir.

Q. Was there a count taken running over several days as to the exact number of people using this spur? A. Yes, sir.

Q. And you are familiar with it? A. I was familiar with it at the time, and I have a general recollection of it now.

Q. Did your recommendations as to the station

850 facilities that were needed to take care of the additional traffic have reference to the evidence and the findings of the Transit Commission? A. Yes, sir.

Q. That there were 12,000 people using the spur a day? A. Yes, sir.

Q. Now take that as a basis. The passengers coming back on the spur at night have first to come up the elevated stairs, and the traffic going on the spur east is not as heavy as the traffic going west? A. That is substantially correct.

851 Q. Did the sale of tickets at the Park Avenue end represent the actual travel on the spur? A. No, sir.

Q. But counts have been taken and the Public Service Commission have determined how many actually use the spur? A. Yes, sir.

Q. And you have that fact that 12,000 have been found by the Transit Commission to use the spur as a basis for determining what new facilities will be necessary at the Third Avenue end? A. Yes, sir. That is one of my reasons for giving my opinion.

852 Q. The elevated railroad runs to 149th Street, and the subway line also runs to the same point? A. Yes, sir.

Q. And is there a free transfer at 149th Street? A. Yes, sir.

Q. So that passengers have their choice as between the elevated railroad and the subway? A. Yes, sir.

Q. Have you taken all those facts into consideration—the fact that there is this alternative subway facility going to the same point, with a free transfer, and the number of people using the subway, 12,000 a day—in reaching an opinion as to

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what facilities are reasonably necessary to take care of the situation, including reasonable future growth? A. Yes, sir.

Q. And what is that? A. Additional stairways must be erected to serve the Third Avenue line and take care of the condition—one additional stairway on the south side of the street.

Q. Are you familiar with the plans submitted to the Transit Commission in connection with the petition as to the facilities necessary in view of the demolition of this spur? A. I am.

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Q. Does that include a stairway on the south side of the street? A. Yes, sir.

Q. And also a stairway at the northeast corner, on the other side of Third Avenue? A. Yes, sir.

Q. So as to take care of the traffic both on the north and south sides? A. Yes, sir.

Q. You know that those plans have been before the Commission? A. Yes, sir.

Mr. Nichols: Those plans have been examined by the counsel for the property owners and by the City, and I understand that there is no objection to them.

Mr. Page: No, sir.

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Mr. LaMotte: I don't know anything about it. I object to the idea of the necessity, so far as the results of the removal of this spur are concerned, of any such extensive improvement to take care of the traffic at that point.

Mr. Nichols: I thought the City authorities had seen these plans and that they had met with their approval.

Q. I call your attention to the fact that the plans proposed to the Transit Commission have additional space provided for the enlarged traffic on the Third Avenue line which would require the

856 setting back of the stairway now existing on the north side of 42nd Street?

Mr. LaMotte: I object to any examination as to plans which have been submitted to the Transit Commission. I do not see where they figure here at all. What we are to pay for, as I understand it, is what we take plus the injury or damage that may result to what is left by reason of what we have taken.

The Court: Of course, simply because the Public Service Commission may approve certain plans it
857 does not follow that these improvements are absolutely necessary, but it seems to me that this is a fact which may be considered in connection with the other evidence in the case.

Mr. Nichols: I have no other tangible basis, and your Honor suggested that we should proceed upon such plans as we have.

The Court: I will allow the question.

Mr. LaMotte: I except.

A. Yes, that is so.

Q. How about the enlargement of the station at Third Avenue to create a broader passageway?
858 A. When this spur is taken away with its tracks and the changes are made in the spur structure more commodious facilities must be afforded to the public at the westerly station of the Third Avenue line for southbound traffic. Such changes as we consider to be necessary to serve the public properly are shown on that map which you have spoken of which was submitted I believe to the property owners also.

Q. Does that require moving the station or any structures in the area of condemnation? A. The stairway at the north side of 42nd Street in its re-

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located position comes about 8 feet within the damage area.

Q. Will you describe the circuit breaker house that is shown now located in the area of condemnation?

Mr. LaMotte: I object to any testimony with respect to the cost of changing that on the ground that it is not a part of the 42nd Street spur.

(To the Witness.) It is used for furnishing electricity to the Steinway Tube, isn't it?

The Witness: Yes, mainly so.

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The Court: The question here is, Mr. Nichols, have you a right to charge against the City the removal or change of location of that circuit breaker?

Mr. Nichols: It is one of the economies of the method of operating these lines together.

The Court: But it is a question whether that would be a proper element of damage here. Suppose you get an estimate of the cost of that, so that I can take the evidence, and then if I determine that it is not a proper element of damage I may strike it out.

Mr. Nichols: I will do that.

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The Court: And I will receive it subject to further consideration.

Mr. LaMotte: I respectfully except to the ruling.

The Court: What I am going to do in this case is to accept evidence on both of your theories of damage so that the record will be in shape for appeal, and if I have reached the wrong decision it may be corrected by the Appellate Division.

Mr. LaMotte: Do I understand that your Honor intends to permit the claimants to prove what it would cost to reproduce the structure and to acquire the easements necessary to maintain it?

862 The Court: It being a case of first impression, I am inclined to admit evidence with respect to the value of the structure and with respect to easements and with respect to the franchise, and then I will receive evidence upon your theory; and I will try to make such a computation finally as I deem established by the evidence and pass upon which theory I adopt.

Mr. LaMotte: Then that will require the City to prepare to rebut the claim of the property owners, and I have not done that, and I will have to

863 be afforded time within which to do it.

The Court: Then you will have to take the time to do it.

Mr. Nichols: I do not seek to take the counsel for the City by surprise. I realize that the City has been relying on a certain theory. Now, there are two things that I would like to see done, in the interest of expedition. First, that this very difficult and confused matter of what should be done in taking care of the Third Avenue situation should be passed upon. And then it is obvious that the City cannot take title to the structure without any definition of what constitutes this spur in 42nd

864 Street; there ought to be some orderly determination of just what is to be removed. Certainly we do not want to be paid for anything except for the damage that is forced upon us.

The Court: That question we have discussed.

Mr. LaMotte: Of course, your Honor realizes that so far as easements are concerned it involves the valuation of all the property abutting on 42nd Street between Park Avenue and Third Avenue. Now, the practical common sense view is that a thing cannot be worth more than it can produce. My view of the law is that testimony as to the

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cost of reproduction of the structure and as to the cost of acquiring easements to maintain it, is what a reasonably prudent man would reproduce the railroad structure for at this time under present conditions. It may have cost this railroad company a lot of money, and it may have been worth a lot of money fifty years ago.

Mr. Nichols: It is worth a great deal more now. To say that a railroad company whose enterprise built up this district, a company which has taken the risk of this railroad enterprise, a company whose easements in other parts of the city have

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unquestionably declined, and where the City has been taxing these easements upon the theory of their present values—to say that the company should not have the real value of these easements determined by the same rules of determination that the Court has so often laid down in similar cases, is absurd. We have acquired easements in this street, under White *v.* Manhattan Railway Company, 139 N. Y., and we have acquired title to this interest in the street—

Mr. LaMotte: For railway purposes.

Mr. Nichols: Yes, for railway purposes. Now the City is taking away those easements. Why should we not have the value of them? They are to be determined in relation to their effect upon abutting properties. When the City condemned a portion of the railroad's property down at Morris Street it demolished a portion of the elevated railroad, but there was left standing a short section extending across the sidewalk of Morris Street. The Cunard Company bought the property adjacent and put up a large building there, and they wanted us to convey our easement there to them because they said that the presence of the elevated

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868 structure across Morris Street in front of their valuable building impaired its value. And they paid us $18,000 for that 50 foot stub extending across the street there. Now, that easement cost us originally about $2,000, but by reason of this increment in value, the change in the character of the neighborhood and the abutting property, it had become greatly enhanced in value. The same thing has happened in various other parts of the city.

Mr. LaMotte: But you are not entitled to re-
869 ceive more than what this spur earns. What it is worth is to be based upon what it earns. The Cunard sale that Mr. Nichols refers to was the result of a contract between the railroad company and the Cunard Company. Here we have a structure that is used for railroad purposes only, and its value must be based upon its earnings as a railroad structure. If an award was made upon the basis of the benefit that would result to the abutting property by the removal of this structure one could not sustain an assessment. We acquire an easement along with the railroad to maintain a
870 structure, and when the structure ceases to be valuable for a railroad and is removed the easement right reverts to the abutting property owners. The Federal Government condemned a canal, and the Canal Company attempted to prove what it was worth by proving what it would cost to reproduce it, and the Circuit Court of Appeals held that it was error to admit such testimony. Now here they must lay the foundation, they must produce proof to show that a reasonably prudent man would expend a certain sum of money in reproducing that spur in order to make the cost of its reproduction admissible.

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The Court: But assume that they cannot do that.

Mr. LaMotte: Then the next best thing for them to do is to prove what it is worth as a railroad structure.

Mr. Nichols: We are not discussing that U. S. Court case. We are discussing real property, which we have defined and if there is anything which has been defined as real property more than these easements I do not know what it is. This is a question of actual existing property rights in that street which we have acquired, and the value of which we are entitled to. That is the question as I look at it. That was a sale to the Cunard Company, and that determined market value. Of course, conditions are not always present when property can be immediately sold. It may rest under some legal barrier to an immediate sale as our property does, but we must consider what it could be sold for were we given an opportunity to sell it to these property owners. Now isn't that pretty much what has happened? The property owners here knowing that they would be assessed part of the cost are perfectly willing to pay the fair value of these easements. The City is not to pay it. We can get compensation for our easements of light, air and access. The property owners are willing to pay us. It is the same as in the Cunard case. They go before the Legislature, the Mayor and the Board of Estimate and Apportionment saying that this will so improve the value of these properties that they want this thing done and that it will not cost the City anything. Isn't that practically making a bargain?

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The Court: I am going to take the testimony on both theories.

Mr. LaMotte: I want to answer one thing that

874 *Claimants' Witness—William F. Reeves—Direct.*

Mr. Nichols has said. The property owners will not pay any more than they are required to pay. Any award that is made based upon the benefit that the removal of these structures will give to the property owners will be an illegal award.

Mr. Page: May I make a suggestion to Mr. Nichols. I think the lease made by the Manhattan Company to the Interborough Company should be enumerated. That is No. 13 in Claimant's Exhibit B.

Mr. Nichols: We will prove that later on.

875 Mr. Page: The Interborough and the Manhattan Company are married, the two systems have been married by reason of this lease, and the Interborough takes all the passengers that do not ride on the Manhattan. So if this spur is removed the passenger takes one route or the other, and it all goes into the common fund. Under this arrangement the Manhattan Company gets three per cent. this year and four per cent. next year and five per cent. and nothing more. I think that runs basically into the question whether the Manhattan Company is affected by the situation, and that these agreements should be placed in evidence.

876 Mr. Nichols: I do not know why this should be interjected by Mr. Page now.

The Court: Is there such a lease?

Mr. Nichols: Yes, sir; and I will put it in later on.

Q. Will you describe the function of the circuit breaker and the cable on the structure?

Mr. LaMotte: This is subject to the objection that I have already made.

The Court: You are intending to give me a specific item in respect to this damage, are you?

Mr. Nichols: Yes, sir.

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The Court: I will allow the question.

Mr. LaMotte: Exception.

A. In a general way the circuit breaker house is the breaker for the cables that lead from the Third Avenue structure down into the Steinway tube, which is about 125 feet west of Third Avenue.

Q. The subway and the elevated lines are operated under a common provision of interchange of electrical power, are they? A. Yes, sir.

Q. And this is one of those instances which permit of that exchange from one on to the other? A. Yes, sir.

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Q. Does the Steinway tube obtain its power from the elevated railroad on the Long Island side? A. Yes, sir.

Q. So that there is a real exchange? A. Yes, sir.

Q. Does that ensure greater safety of operation from breakdowns? A. Yes, sir.

Q. And does it represent any economy in joint operation? A. Yes, it does.

Q. Now, will you describe it? A. The cable is attached to the elevated structure. The cables take their power from the third rail which comes up from No. 6 station at 34th Street. I think the details of this description of this circuit breaker house and its functions might better be taken up later by somebody who is more familiar with it than I am. I can give you a general survey of it only.

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Q. But the cable is attached to the elevated structure at the present time? A. Yes, sir.

Q. And it is necessary to the operation of the line, is it? A. Yes, sir. The cable extends from the circuit breaker house westerly along the structure to the column immediately in front of shaft No. 1 on the south side of the street.

880 Q. If this elevated structure is removed in this proceeding the operation of the Steinway tunnel could not continue unless some other provision was made for the cable. Is that so? A. Exactly.

Q. Now, the locker room that is shown on the damage map on the south side of the street near the station; what is that? A. That is a house used by the track men employed in the service of the Manhattan Railway division of the Interborough. That is a room provided for the men who work in the central section of the Third Avenue line.

881 Q. Do those men work on the Third Avenue line or on the spur? A. They work on both.

Q. And would provision have to be made elsewhere for them? A. Yes, sir.

Q. And at this point, in connection with the station at Third Avenue? A. Yes, sir.

Q. You have described the changes in the location of the columns that would be necessary for the demolition of the spur near Third Avenue? A. The two columns constituting part of Bent No. 1 would have to be moved north and south respectively to the curb lines of 42nd Street. The column on Third Avenue on the westerly curb of

882 Third Avenue, which is within the damage area, would not have to be disturbed.

Q. I notice a supporting girder where a column that is now in Third Avenue half way between the curb line, substantially in front of the station line, and a column the first of the series of columns on the south side of 42nd Street, which is a broken line. Is that a girder? A. There are a number of short girders in there that run from the main line of the structure to the girders that extend from these columns within the damage area which would have to be changed to conform to

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the new line or lay out of the Third Avenue station, and a portion of those girders come within the damage area.

Q. Are those girders necessary for the support of the Third Avenue station? A. Yes, sir. The main girders on the west side of Third Avenue and to the south and north of the columns in 42nd Street, will have to be shifted to conform to the general plan of removal of the spur.

Q. If they are not shifted there would then be no support for the Third Avenue station? A. If they are not shifted they would remain as they are now and the support would still remain. If they are shifted new supports will have to be put in.

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Q. If the columns were taken away in this condemnation area would that involve destruction of the necessary support to the Third Avenue station? A. It would.

Q. You are familiar with this structure as it existed on December 30th, 1879, are you? A. Yes, sir.

Q. You were then in the employ of the company? A. I was in the employ of the New York Loan & Improvement Company and its contractors who were building the Second Avenue line at the time.

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Q. Can you tell whether the structure and columns existed as shown upon the map approved as of that date by the so-called Governor's Commission? A. Yes, sir.

(Recess until 2 P. M.)

886 *Claimants' Witness—William F. Reeves—Cross.*

AFTERNOON SESSION.

WILLIAM F. REEVES, resumed the stand.

Cross examination by Mr. LaMotte:

Q. Mr. Reeves, when was the portion of the elevated structure in Third Avenue from the Brooklyn Bridge to 42nd Street constructed; what year? A. In 1877 and 1876.

Q. When was the spur running from Third Avenue to Park Avenue constructed? A. About the same time.

887 Q. And was that the northerly terminus of the road at that time? A. At the opening day, August 26th, 1878, yes.

Q. And the road ran its trains directly from Brooklyn Bridge to the Grand Central station? A. Yes, sir. Not from Brooklyn Bridge, no; from Chatham Square.

Q. Chatham Square? A. Or South Ferry.

Q. When was the Third Avenue Road extended north from 42nd Street, in Third Avenue? A. In the same year. They were built in sections, 1877 and 1878, and the road was opened up north of
888 42nd Street on the Third Avenue line in December, 1878.

Q. And after the road north of 42nd Street was opened up for use, did they both run trains directly north up Third Avenue, and also from downtown to 42nd Street? A. For a short period only, a few months.

Q. When did they cease doing that? A. A few months after opening.

Q. What was the occasion for that? A. There was an accident on the Third Avenue Line; the trains met at the crossing, a very serious derailment.

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Q. Was there any public action taken on that that required the railroad to use the shuttle trains from Third Avenue to the Grand Central? A. I have a recollection of some such event, but I am not prepared for the moment to go into it.

Q. But since that time the spur has been operated by this shuttle train? A. Yes, sir.

Q. And the passengers have transferred at the Third Avenue station on 42nd Street? A. Yes, sir.

Q. You don't know, do you, whether it would ever be possible to resume through traffic on the spur? A. I don't think it would.

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Q. So far as your understanding of the practical side of it and of the law is concerned, the 42nd Street spur would be required to continue to be operated as it is, at the present time, by shuttle trains? A. Yes, sir, under present physical conditions.

Q. Now, how many tracks are there on this spur? A. There are one, two and three.

Q. What do you mean, three sets of tracks? A. I mean it is a one-track road at the easterly end, two-track road in the middle, and a three-track structure at the westerly end.

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Q. And under what conditions are all those tracks used? A. During the rush-hour period, almost all the tracks are used.

Q. Is it not a fact that for some years the railroad has been operating only one track? A. At the easterly end, yes, that has been so for a long time. But at the westerly end, no; they have used the remaining tracks for traffic—

Q. But the southerly through track, extending from Third Avenue over to the station, has not been used for some years; is that not correct? A.

892 Why, that southerly through track is used every day.

Q. Well, the northerly one, then. A. And the northerly one is used every day. There is a small piece of track to the south of the station, which I think maybe you have in mind, which is not used as frequently as the other tracks on the spur.

Q. Let me understand. Just refer to the damage map, Mr. Reeves. Now, there is a northerly track and there is a southerly track? A. Yes, sir.

Q. And the southerly track, near Third Avenue,
893 turns north into the northerly track, is that not correct? A. Yes, sir, at the station.

Q. Yes. What is your method of operation there? A. Why, trains come east on the southerly track from the Grand Central Station and enter into the station, and wait for a train to pull out of the Third Avenue station before they enter that station. And the reverse operation in the trains moving east and west on the northerly track.

Q. That is the present method of operating the road? A. Yes, sir.

Q. And the portion of the track which is not
894 operated is this extension towards Third Avenue? A. That is not used in daily operation, but it is a necessary part of the spur, because that is the only way we have of taking our trains off the spur on to the main line, to get them to the yards or the repair shops.

Q. That is used as a means of connection? A. Oh, yes, it is the only way we have; it is a necessary part of the spur.

Q. How many trains are there that are operated on this spur? A. Well, there are generally two trains, consisting in the non-rush hours of one car, and then a two-car train during the rush hours,

and they shuttle back and forth on this spur track, about five minutes headway. 895

By the Court:

Q. You mean on the northerly track trains run over west to the station? A. Yes, sir.

Q. And they come back on the southerly track, do they? A. And they will come back on the same track.

Q. Oh, they will. A. And they will wait here (indicating), if there is a train coming out here, to go in there, and they come up there; if this train is in here, this train will wait until this goes out. Just at that point both trains shuttle on the same track (indicating). 896

Q. In rush hours are those cars two-car trains, or one of them two and the other one? A. There are two two-car trains, run at more frequent intervals than during the middle of the day service.

By Mr. LaMotte:

Q. Mr. Reeves: I understood you to testify that the map which was offered in evidence in this proceeding as Claimant's Exhibit D, correctly represented the location of the railroad and its stairways at the time it was erected; is that correct? A. No, not exactly. They have— 897

Q. No, at that time I am speaking of. A. Yes, at that time.

Q. Do they correctly locate the railroad, the supports of the railroad, and the stairways and stations, as they were originally erected? A. Yes, sir.

Q. When was the northerly stairway at Park Avenue changed so as to enter the Grand Central Station? A. About 1886.

Q. And that change consisted in doing away with

898 the stairway running to the street, and bridging the sidewalk so as to enter the station, is that correct? A. Yes, sir.

Q. Now, how long did that condition exist? A. Four or five years. There were three or four changes in that connection, and three or four changes in the interior of the Grand Central Station, where they accommodated our passengers.

Q. Those changes did not relate to a stairway leading to the street? A. Only the stairway that led from the station, in the inside of the Grand

899 Central Station,—

Q. Yes. A. (Continuing.) Down into Depew Place.

Q. Those stairways were not on the street, were they? A. Well, if you call Depew Place a street, I should say yes.

Q. Well, they were not on 42nd Street? A. They were not on 42nd Street, no. But then they used, at the same time the Grand Central had a very wide flight of stairs that extended from the street up into our station room, which were used by our passengers.

900 Q. Yes. Now you say four or five years after that bridge was put across the sidewalk into the station another change was made. The bridge was done away with, the entrance to the station was done away with, and a new stairway was built leading from the station to the sidewalk on the north side of 42nd Street at Park Avenue, is that correct? A. Yes.

Q. So that at that time was that stairway erected as it is shown on the Damage Map? A. No, sir, not as located on the Damage Map, no, sir.

Q. Not as located? A. No, sir.

Q. How was the stairway built at the time of the

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first change, from the bridge to another stairway? A. They built a bridge connecting from our station, about 60 or 70 feet long, extending westerly to a stairway which then ran down into the street on the north curb line of 42nd Street.

Q. In what way did that stairway which was built at that time differ from the stairway which is shown upon the Claimant's Exhibit D? A. Which is the original 1879 map?

Q. This map, yes. A. It ran in a different direction; it descended westwardly instead of eastwardly, as shown on that map.

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Q. That is, instead of the stairway coming down easterly it turned the other way and went westerly? A. Yes.

Q. So it occupied a space of the sidewalk which was north of the space occupied by the stairway shown on Exhibit D? A. Which was north? Which was west of it.

Q. I mean west? A. Yes, sir.

Q. Now, how long did that stairway exist there? A. Up to about 1913.

Q. And what happened in 1913? A. In 1913 this viaduct connecting the upper level of the New York Central station with Park Avenue, and the doing away with the open cut below belonging to the Madison and Fourth Avenue horse car line was built, and this stairway was in the way of construction; so under contract with the Central people or the people who built the viaduct, that stairway was moved to the east, as it is today.

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Q. To the east. Now can you take these two maps, the Damage Map and the Claimant's Exhibit D, and just describe the difference in the location of those two stairways? That is, the one

904 that existed when the structure was first placed there and the one that exists today?

The Court: Do you want to show him the map?

Mr. LaMotte: There, Mr. Reeves, just take that map (tendering map).

A. No, thank you; I was just thinking for a minute. The difference between the stairway there today and as indicated on the original map under which the road was originally constructed, signed by the Commissioners—

The Court: Exhibit D.

905 A. (Continuing.) Exhibit D, the stairways are simply reversed in their downward trend. This stairway descends to the east.

The Court: Referring to Exhibit D.

A. (Continued.) Referring to Exhibit D, and on the Damage Map indicating the stairway now in position, it descends to the west.

Q. Well, are the stairways of the same dimension? A. The stairways are of practically the same dimension.

Q. The same dimension? A. Yes.

Q. Except that the stairway that is there today
906 occupies a portion of the sidewalk considerably west of the portion of the sidewalk occupied by the stairway erected at the time of the construction of the road? A. Yes. Of course, when that first stairway was put in, previous to this one, there was no sidewalk there.

Q. Well now, let us come to that. Will you look at Claimant's Exhibit D, and state whether that shows the width of the sidewalk on the north side of 42nd Street between Park Avenue and Lexington? A. Yes, sir.

Q. What is the width? A. Why, it shows it but

not in figures. It is drawn to a scale, and there is a difference—

Q. Well, is it not much wider at that point than any other part of 42nd Street? A. No, it is wider for a short stretch just west of Lexington Avenue, on the north side, I think that wide part extends maybe for 125 feet. West of that then the sidewalk narrows down to about 22½ feet, as indicated on this map, the same as the width of sidewalk extending eastwardly from Lexington Avenue on the north side of the street to Third Avenue. 908

Q. Right at that point, Mr. Reeves, according to the Damage Map, some of those columns supporting the structure were on the curb of that sidewalk, were they not? A. Yes, sir, the northerly sidewalk of 42nd Street.

Q. Now, since then that sidewalk has been narrowed, has it not? A. It has.

Q. And how many supports are there that stood on the curb, that now stand out into the street? A. Four.

Q. Four. Now going back to the question as to the sidewalk being there at the time the first stairway was constructed, what did you mean by that? 909 A. That there was no sidewalk.

Q. Yes. A. Because Fourth Avenue ran right through, as indicated on this map; it is shown going right through on this map.

Q. You mean the stairway went down into the middle of the street? A. No, that accounted for the 70 foot bridge which I spoke about; it spanned that avenue, and landed the stairway immediately west of the extension at that time of Fourth Avenue north of 42nd Street.

Q. But the stairway as shown upon Exhibit D

910 comes down on to the sidewalk, does it not? A. It does, extending eastwardly.

Q. Yes, that is what I mean. A. But when we had to replace the stairway in the street, that is the way we put it, extending westwardly.

Q. Do you know of any authority, legal authority, under which that change was made by the railroad?

Mr. Nichols: Well, I would object to his asking the witness about legal authority.

Mr. LaMotte: I am not asking him for the law,
911 but whether he knows.

The Court: Well, do you know how it was done?

The Witness: Well, it was done under our right to make connections with the buildings.

Q. Do you know of any agreement? A. As it reads in the specifications under Article 52, I think it is.

Mr. Nichols: 52.

The Witness: 52, I think it is.

Mr. Nichols: Giving us the right to put them wherever the public convenience might require.

912 Q. Do you know of any agreement that was entered into between the railroad and the City as to that change? A. Not specifically, no.

By the Court:

Q. Let me ask a question here. You say that at the time this structure was originally erected Fourth Avenue crossed 42nd Street to the north? A. Yes, sir, as indicated on this map (Claimants' Exhibit D).

Q. Where was the Grand Central located at that time? A. Right in here (indicating).

Q. Just to the west of Fourth Avenue? A. To

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the west of Fourth Avenue. There was a saloon on that corner, a wall paper house, and then the Home for the Ruptured and Crippled Children, right on that corner. Fourth Avenue went through, and west of that was the station. Our specifications and plans indicated that we should come up to and cross Fourth Avenue to connect with the Grand Central station, which was over here (indicating).

Q. The Grand Central Station was located between Fourth Avenue as it then existed, and Vanderbilt on the north? A. Vanderbilt Avenue on the north, yes.

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Q. That was the width of it, was it? A. Yes, sir; and then afterwards they took streets and gave streets, and took structures and gave structures, and made a various number of changes in there in the layout of the streets and the layout of the structures, until we finally got down to this undisturbed structure here since 1913, which is now located and constructed on East 42nd Street.

By Mr. LaMotte:

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Q. Mr. Reeves, the present method of transferring passengers from this shuttle train to trains going south is what? A. To trains going south on Third Avenue?

Q. On Third Avenue? A. Why, people enter the Park Avenue station of the spur by means of this stairway on the north curb line, and they—

Q. No, no, I am not speaking now of that. A. (Continued.) And they deposit the nickel and go through a turnstile.

Q. One minute. I am speaking of the passengers that come from Park Avenue, going downtown?

The Court: After they reach the Third Avenue station?

916 *Claimants' Witness—William F. Reeves—Cross.*

Q. (Continued.) After they reach the Third Avenue station; do they proceed on a level? A. They climb this stairway to the track overhead, and then transfer on a level at Third Avenue for the downtown trains, and cross a bridge for the uptown trains.

By the Court:

Q. After they reach the Third Avenue station on the shuttle trains, they get off on to a platform that is on the same level with the downtown platform on Third Avenue? A. Yes, sir.

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By Mr. LaMotte:

Q. Why is it necessary to go downstairs?

The Court: They do not go downstairs.

The Witness: They do not go down.

The Court: He is referring to the stairs at the other end.

The Witness: No, but I have given you the whole movement of a passenger from the beginning of his ascent of these stairs on the Park Avenue end until he took his train for north or south bound on the Third Avenue line.

918 Q. Exactly. Now, if he wanted to go north it would be necessary for him to cross the bridge? A. Yes, sir.

Q. Is that over the track or under the track? A. Under the track.

The Court: He goes down?

The Witness: He goes down, right.

Q. Now if the spur was taken away, passengers which you contemplate would come over from 42nd Street or from Park Avenue, would go up the stairway and across the same bridge, would they not, to go on the uptown side of the road? A. If

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they did not take the stairway on the north side, yes; if they took the stairway on the westerly side of the track—

Q. (Interposing.) They would have two ways of doing it; they could go up on the west side and cross under the tracks by the bridge, or they could walk across Third Avenue and go up through the station, the stairway at that side? A. Well, that is about right, yes, sir.

Q. Yes. A. But I think you have got the points of the compass mixed, Mr. LaMotte.

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Q. Have I? A. Yes. You said west; you mean the east side, coming up, going across, or—

Q. I mean this, passengers coming from Park Avenue— A. (Interposing.) Yes, you can enter either way.

Q. Either way? A. Either way, from either side.

Q. From either side? A. Yes.

Q. That is, if you wanted to go north you could enter from either side? A. Yes, sir.

Q. And those passengers going south would enter on the west side, take the west stairway, and go through the same process as the people who got off of the shuttle train, to get to the downtown train? A. Practically so, yes.

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The Court: Well now, I am not quite clear on that. You are asking now with respect to conditions after the structure is removed?

Mr. LaMotte: I am trying to compare the conditions now with what they will be after the structure is removed, as to the passengers who would walk through 42nd Street to take the road at Third Avenue, instead of—

The Court (interposing): Well, going downtown they would go over, then, to Third Avenue,

go up a flight of stairs, and they are on the level of the platform.

The Witness: Yes, sir.

By the Court:

Q. Would there be one or two stairs to go up, for those downtown passengers? A. There should be two. There is one now.

Q. You expect there will be two? A. We hope there will be, yes. We must take into consideration the fact that this station at Third Avenue is
923 a very busy station today. That stairway today leading from the corner of Third Avenue and 42nd Street is very largely used by passengers going downtown, who never rode on the shuttle.

Mr. LaMotte: That is all right, Mr. Reeves.

A. (Continuing.) Now if you are going to throw the shuttle traffic down into that other traffic already there, then you are going to have a congestion on that northerly stairway leading up into the station.

Q. Now then, take passengers that come from Park Avenue and want to go uptown, if they go up
924 on the westerly side must they still go down to go up, or must they still use the bridge underneath? A. No. After the shuttle is removed, if they want to go uptown they may take the stairway on either side of the street to reach—

Q. Well, if they take the one on the west side how do they get over? A. They take the bridge.

The Court: I see.

By Mr. LaMotte:

Q. Just the same as they do now? A. It saves a passenger going through the very heavy vehicular traffic on Third Avenue and 42nd Street, to get to

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a station where he may want to go to his destination.

Q. Now, Mr. Reeves, you have testified, or answered questions that related to a plan which the company has, I believe, submitted to the Rapid Transit Commission; is that correct? A. Some reference was made to that plan, yes.

Q. Yes. Now you have testified that it is your idea that after this spur is torn down it will be necessary to erect two additional stairways; one on the south side of 42nd Street on the west side of the railroad, and one on the south side of 42nd

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Street on the east side of the railroad; is that correct? A. No.

Q. On the north side?

The Court: I think he said the northeast side.

The Witness: That is right.

Q. One on either side? A. Yes, one on either side, besides the reconstruction of the present stairway.

Q. Now you have testified that in your judgment that would be made necessary by the increased traffic coming from Park Avenue, due to the destruction of this spur; is that correct? A. Well,

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due to people coming from Park Avenue and the adjacent territory, which is rapidly growing there every minute.

Q. Exactly; but this adjacent territory which you speak of, anywhere east of Park Avenue would at the present time use the stairway at Third Avenue on the north side of 42nd Street, would they not?

The Court: Do you understand the question?

The Witness: No; I am afraid it is the points of the compass. Coming from the east; you see, there is no stairway—

Q. Take for instance a passenger who came up

928 Lexington Avenue and he wanted to go uptown on the Third Avenue "L," would he walk to Park Avenue to take the spur and transfer, or would he walk east and take the railroad at the Third Avenue station? A. I have no way of telling what he would do.

Q. No. A. Only by the indicated number of tickets sold.

By the Court:

Q. Well, it will probably be more convenient for
929 them, would it not, to walk right over to Third Avenue and go up the stairs, than it would to go over from 42nd Street? A. It may be for a few but it is not so for the twelve thousand or more passengers we carry there; they seem to think it is more convenient.

Q. Well, that is so, I presume, for passengers who want to get on at Grand Central; but you see, Lexington Avenue is east of the Park Avenue station. A. You see, many people coming from the west take that stairway at the Park Avenue end to get on the Third Avenue line, who did not come
930 from the Grand Central station.

Mr. Nichols: These are only—excuse my interrupting, but these are only passengers Mr. LaMotte has in mind who originate at Lexington Avenue, which is already a good deal of the distance over to Third Avenue.

The Witness: Yes.

Mr. Nichols: I do not think you understood.

Q. They would go over to Third Avenue, rather than go up to Grand Central and take that shuttle over? A. Yes, that is quite true.

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By Mr. LaMotte:

Q. So that the passengers who now use the spur and who would walk over to the Third Avenue station after its destruction, are those in the immediate neighborhood of the station at Park Avenue, are they not? A. I should say so, yes.

Q. When you came to the conclusion that it was necessary to have two additional stairways erected at the Third Avenue station, you must have had some idea as to the number of passengers who would be there to use them after the destruction, that are not there now. Now, how many did you 932
have in mind? A. Well, I did not have any particular number in mind, although I have gauged that coming event by my long experience. If we should take away the spur and the station at the Park Avenue end, and the stairway, it would leave only one stairway to serve the westerly southbound Third Avenue station.

Q. Yes, I understand that. A. That does not obtain in any other station in the entire system.

Q. I understand all that. A. We have put up additional stairways due to increased traffic at many of our stations along the line; it is due to 933
experience that has occurred. We do not like to wait until the traffic comes to put up a stairway.

Q. No. A. Because then we inconvenience the public before we put up the stairway and after. We anticipate it and we gauge it by our past experience, and that is what I have done in this particular instance.

Q. Yes. Now, how many passengers did you assume, first, used daily the spur? A. Well, the traffic figures I have not before me, but I think it is about 12,000 passengers a day that are indicated

as having purchased or paid their way, paid their fare.

Q. Now, you do not mean that, do you? You mean that 12,000 people were shown to have used it by an actual count; that took in the passengers going and coming, did it not? A. Well, indicate—

Q. Now, what did you assume? That is what I am trying to get at. A. I told you what I assumed. I assumed on past experiences.

Q. Mr. Reeves, did you or did you not assume that 12,000 passengers paid their fare at the Park
935 Avenue station daily? A. Not exactly, no.

Q. Did you assume that 12,000 took in all that used the spur both ways? A. My recollection is now, not having made the count myself, that that 12,000 indicated the paid as well as the counted passengers.

Q. That is, it came from an actual count, is that right? A. I feel that way. That was my conclusion.

Q. That is what you felt? A. But that is only part of the traffic which would come to the Third Avenue station.

936 Q. I understand. Now, did you assume that all those 12,000 people would each day use the station on Third Avenue after the spur was taken down? A. Generally speaking that is correct, yes.

Q. That is correct. In other words, that the Third Avenue System would still continue to haul all the passengers that now use the spur? A. Yes.

Q. You assumed that? A. I assumed that, in a general way, yes.

Q. Now, does that not, as a matter of fact, take in all the passengers which would now use the stairway at Third Avenue, or which will use the stairway at Third Avenue after the removal of

the spur, who do not use it now? Does that not take in everybody? A. Why, no. There is a traffic also from Third Avenue, to go through the Third Avenue stairway, which is not indicated in this count.

Q. Exactly, but this is the only additional traffic that would come to the Third Avenue station as a result of the removal of this spur? A. Indicated by present conditions.

Q. Exactly. A. I mean present traffic conditions. What the future is going to be is problematical, but we can guess pretty close. 938

Q. To accommodate, then, those 12,000 passengers which you assume will all go over to the Third Avenue road and drop their nickels there instead of at the other end, you have provided for two additional stairways? A. We have provided those additional stairways for those 12,000, and have also concluded that the growth of 42nd Street would continue, and that we would have to provide facilities for further traffic.

Q. So that this provision you have made is for the future as well as the present? A. It is a future development of that station and 42nd Street. It is 939
a railroad proposition, and any traffic man would figure it out the same way. You could not get away from it.

Q. What provision have you made for the change in this breaker house, transformer, this circuit breaker house? A. Why, we have shifted it to the station platform, outside of this Damage Map area, on the Third Avenue end of the structure.

Q. It still stays on the structure of the station at Third Avenue? A. Yes.

Q. And what arrangement have you made for

940 carrying the circuit from that breaker over to the Steinway tube? A. Why, we carry the cables down the two adjacent columns to that circuit breaker house, one near the corner of the west curb of Third Avenue and the other on this new or relocated southerly column, which is to be put on the curb line, the south curb line of 42nd Street; and then we carry them down into a conduit line below—that is, we propose to carry it down in a conduit line below the level of the south sidewalk of 42nd Street, to the Shaft No. 1 leading
941 into the Steinway tube.

Q. You propose to build a new conduit to carry this line through, or use those that are there at the present time, in existence in 42nd Street? A. There is no conduit line in 42nd Street that we can use today.

By the Court:

Q. Well, can you use the same wires? A. No, sir.

Q. Have you got to put in entirely new wire? A. Yes, sir, entirely new cable, a submarine cable or sub-surface cable going through a conduit line
942 is of an entirely different make-up than when used on the structure. One is a lead covered waterproof cable, and the other is a rubber insulated cable that is just laid on the structure.

By Mr. LaMotte:

Q. Now you have made this provision for a new conduit under the belief or assumption that there is no conduit in 42nd Street at the present time to take care of such a cable? A. I know it to be positive, there is none, sir. I have made investigations of that myself.

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Q. What relation exists, if you know, between the Manhattan Elevated and the Steinway tube? A. The Manhattan Elevated and the Steinway tube—well, they are all one family. Now there must be some relation if they are all in one family.

Q. Is the Steinway part of the Interborough? A. Yes, sir.

Q. Does the Manhattan own the Steinway? A. No, sir.

Q. Who owns the Steinway, if you know? A. The City of New York.

Q. The City of New York? A. They own the tube; the Interborough operates it.

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Q. The Interborough operates it? A. Yes, sir.

Q. Who furnishes the electricity that goes over this cable, to run the Steinway tube? A. Why, the electricity that is supplied through those cables on the spur for the use of the Steinway tube, comes from Sub-station No. 6 in East 34th Street, near Second Avenue.

Q. And who owns that Sub-station No. 6? A. The Interborough Rapid Transit Company.

Q. The Manhattan does not own it? A. Well, it is another family matter.

Q. Another family matter? A. With a difference of relationship.

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Q. Does the Interborough pay the Manhattan Company anything for the use of these structures to carry this electricity across to run the Steinway tube? A. Not that I know of.

Q. Is there any provision made in the lease that you know of, from the Manhattan Railway to the Interborough, in reference to the carrying of this conduit to the Steinway tube? A. I think that comes in the lease, the Interborough have the right to use the Manhattan structures for whatever pur-

946 pose may facilitate the operation of the trains for the traveling public.

Mr. Nichols: The lease is in evidence and speaks for itself in that respect.

The Court: Is the Interborough the lessee of the Manhattan?

The Witness: Yes, sir.

Q. When was this conduit placed on the structure in 42nd Street, the cable? A. There is no conduit. There were cables placed there in 1901 and 1902.

947 Q. 1901 and 1902? A. And 1902, yes, sir.

Q. When was the Steinway tube opened for operation? A. About 1913, I think it was.

Q. And this cable was placed there ten years before the Steinway tube was placed in operation? A. No; I am wrong about that.

Q. Yes. A. I was thinking for a moment of the electricification of the lines. As I recollect it, the cables which supply the power and light to the Steinway tube were placed there about, just previous to the opening of the Steinway tube.

Q. That is 1913? A. That is my impression now, without being accurate.

948 Q. This lease that was entered into between the Manhattan and the Interborough was ten years previous to that, was it not? A. I believe so.

Q. Now do you know of the existence of any agreement between the Interborough and the Manhattan as to the location of these cables in 1913? A. Why, not for the moment.

Q. What sized cables are they, Mr. Reeves? A. Why, the present cables on the elevated structure I thing are two and a half inch cables. The new cables would have to be larger, because of being

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lead covered, sub-surface cables, they would naturally be larger. They are larger.

Q. Are you quite sure that there is no conduit in 42nd Street that would accommodate a cable of that size? A. Yes, sir.

Q. Are you sure? A. Yes, sir. That is, I am sure so far as I am able to ascertain by inquiry. I have not measured.

Mr. LaMotte: I think that is all, Mr. Reeves.

Redirect examination by Mr. Nichols:

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Q. You were asked as to the extent of operation on the spur of one car and two car trains. What relation has the actual operation now to the capacity of the spur to accommodate, what proportion of the capacity, roughly speaking, is represented by the actual operation? Is there room for expansion, and how much? A. I don't know—there is room for expansion in different train operation on the spur; that is, they could run longer trains.

Q. The limit is now two trains? A. Yes.

Q. I mean, two cars? A. Two cars.

Q. And they might run a much larger number of cars? A. Oh, yes, yes.

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Q. How about the time interval? A. And the time interval may be shortened a bit.

Q. So that there is surplus capacity there? A. There is a possibility for development of that spur service.

Q. Yes, but at certain times when the subway is congested, is it true that they signal up to the spur to increase their operation in order to take care of the people that are not permitted to get down into the subway? A. That is true, and that has been done numerous times since the subway was opened.

Q. And has there been capacity to take care of that? A. No.

Q. I do not mean in the subway; I mean the spur? A. No, they overcame the traffic facilities on the spur, the crowd that came up there. They did the best they could under the circumstances, and they increased the capacity over what it is today very materially.

Q. If that were a permanent condition, a regular condition, they would have more cars and could take care of the increase, could they? A. Yes, sir.

953 Q. That is what I mean. A. Yes, sir.

Q. Now the southbound track on the Third Avenue line is on the same level as the spur, is it not? A. Yes, sir.

Q. And there is how wide a platform to walk across, to transfer from the spur to the southbound track? A. Maybe 25 feet.

Q. Yes. The passengers coming down in the morning from the north can transfer to the spur by just walking across that platform? A. Yes, sir.

Q. And similarly at night going home? A. Yes.

Q. Yes; and the stairway going up from the stairs to get to the northbound track, relates only
954 to that part of the traffic that uses the northbound track? A. Yes, sir.

The Court: I understand you go down and up?

The Witness: Yes, you go down and up. It is a sub-grade bridge.

Q. Yes. You spoke about the traffic originating from the neighborhood of Park Avenue. You do not mean to confine it to traffic originating from there. Is there any subway or other transit facilities in Fifth Avenue, for instance? A. No; not rapid transit, no.

Q. Have you made any study of the development of traffic in that vicinity? A. I have, yes, sir.

955

Q. And what was your opinion in regard to its growth?

Mr. LaMotte: I object to this. That is going into the future, pure speculation.

The Court: Well, if he has made a study of it he may testify.

Mr. Nichols: I am speaking about the growth in the past, which would throw some light upon what is to be expected in the future.

Mr. LaMotte: We are not here to pay you for providing for the increased traffic that is to come in years to come; we are here to deal with the

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situation as it exists today. You can go into all sorts of realms of speculation as to what will exist 25 years from now; we do not care anything about that; we are here to provide for the conditions as they appear at the time we take this structure, not in the future.

Mr. Nichols: Well now, just a moment. Nobody undertakes the operation of an elevated railroad—and taking your own argument as to whether this spur would be provided supposing the railroad problem came up today, nobody would be competent to consider that situation who would not

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fully judge the future as well as the past. It is a very serious thing, the expenditure on transit lines. It is not undertaken without a very grave consideration of what is to happen in the future. Nor can we consider the value of this perpetual franchise here, this right that is peculiar so far as rapid transit is concerned in the City of New York or Manhattan, this perpetual right in this, the gateway to the city, the most important traffic developing centre that the world has seen, here at 42nd Street, withouf considering the future.

958 *Claimants' Witness—William F. Reeves—Redirect.*

The Court: I will receive it. Objection overruled.

Mr. LaMotte: Exception. May I have an exception, because while that may be all true as to the future—

The Court: But it seems to me that in considering the value of this franchise as of today, you have a right to take into consideration the potentialities of the situation.

Mr. LaMotte: As I understand it, his claim is that—

959 The Court: He is simply, as I understand it, describing what the traffic conditions are in the neighborhood of Fifth Avenue and 42nd Street, and what has been the relative increase and what it will be.

Mr. LaMotte: In relation to the provision for taking care of Third Avenue. Of course—

The Court: That is all, of course.

Mr. LaMotte: They may have all sorts of plans for the future, but that is immaterial in my view of it, so far as this case is concerned.

The Court: Proceed. Do not argue.

960 *By Mr. Nichols:*

Q. Well now what have you observed in relation to the growth of traffic from this general 42nd Street district, as it is called in railway circles? A. 42nd Street, around the Grand Central Depot, has grown to be one of the most important traffic centres of the City of New York, and in fact almost of the world, because it is the hub of the traffic centres. Pedestrian traffic has increased there enormously, 200 to 250 per cent. in the last few years.

Q. Were you present at the hearing before the

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Transit Commission where the figures were developed as reported to the Transit Commission, showing an increase of 100 per cent. in five years in the traffic originating at the transit stations on 42nd Street? A. Yes, sir.

Q. And the fact that Fifth Avenue has no transit facilities—and are any projected in Fifth Avenue? A. No, sir.

Q. No; and what has been the development around Fifth Avenue? A. None in transit, except the crosstown—

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Q. Not in transit, but I mean in traffic, in the population? A. Oh, the development of traffic has been enormous through there. Vehicular traffic and pedestrian traffic have been almost impossible to take care of.

Q. Yes. I am only asking this with relation to the question that was asked you about traffic coming from Park Avenue. Where does it come from, in fact? A. It comes from all around that neighborhood.

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Q. Yes, that is what I mean. You have made no study as to the particular percentage that is expected to use the Third Avenue line or the subway, if this spur is taken down, have you? A. Not any figures, no.

Q. You have only in mind the 12,350 that were found to use it every day by the Transit Commission? A. No, I have something greater than that in mind. I have in mind the use of the station, the passenger use of the station in the future and the present, if the spur is taken away. The 12,000 passengers that rode on the spur are only a part of the traffic that we would get in addition to what we have now at the Third Avenue station.

Q. Have you in mind the fact that the Transit

964 Commission reports an increase of 21 per cent. in the use of the spur, the number of passengers carried this month of October over last year? A. I heard that stated, yes, sir.

Q. And those figures are collected by the Transit Commission? A. Yes, sir.

Q. Now you have in mind the future growth there at Third Avenue in giving your statement about the stairways? A. I have not a doubt, yes, sir.

Q. The subway, is that a route paralleling the
965 elevated line up to 149th Street? A. No.

Q. I mean the subway and the elevated? A. The Lexington Avenue line parallels the Third Avenue line.

Q. That is what I mean. A. Yes.

Q. And both lines take you to the same point, where there is a free transfer? A. 149 Street and Third Avenue, yes.

Q. So that the passengers that are now using the spur can take the subway and reach the same point? A. Yes.

Q. Without additional fare, north of 149th
966 Street? A. Yes.

The Court: They cannot transfer from the spur to the Lexington Avenue subway, can they, at the Grand Central?

Mr. Nichols: No.

The Court: I understand what you mean; up to 149th Street.

Mr. Nichols: Yes. You see, they can start either way they want to, and now they go over to the elevated line, perhaps, if they prefer relief from congestion, and it divides the traffic. When the spur is taken down what will happen was very carefully considered by the Transit Commission,

and they figured that 60 per cent. would use the subway, and we had it 54, would not use the elevated line.

Q. The lease with the Interborough and the Manhattan, as far as you know, has no special provision for paying for cables or anything of that kind, has it; that is simply a lease of all the property? A. Exactly.

Q. For joint operation as a unified system? A. Exactly, yes, sir.

Q. And the interchange of power is common all through the city, is it not? A. It is. 968

Mr. Nichols: I think that is all.

Recross examination by Mr. LaMotte:

Q. You speak of this enormous increase in the traffic at this point in the last number of years. Is it not a fact that in spite of this increase this spur carries less passengers today than it did 20 years ago? A. That may be true. There may be reasons for that, good reasons.

Q. Yes. What is the width of the stairway on the north side of 42nd Street at Third Avenue? A. About four feet.

Q. Five feet, is it not? A. On the Third Avenue end? 969

The Court: Yes, on the north side of the street, right here (indicating on map).

The Witness: It may be five feet. I do not think it is quite five feet; it is very close to it.

Q. What is the capacity of the stairway per foot per minute? That is, how many people can use each foot of that stairway per minute? A. Why, I have those figures.

Q. Eighty, is it not? A. Now wait a minute. Eighty passengers per minute per foot of width of stairway, is it not?

970 *Claimants' Witness—Wm. F. Reeves—Re-redirect.*

Q. Yes. Now that would be for— A. I think that is the formula.

Q. Yes; for a stairway five feet wide, 400 people could go up there each minute of the day, could they not? A. That is the capacity of the stairway for passengers moving in one direction; but you must bear in mind that there is only one stairway there, they move in both directions. There are just as many coming down as going up, and there is no figuring the capacity of a stairway under such conditions. You have got to get an
971 easy moving body of people to get that capacity.

Q. Have you figured out in your mind how many people could use that in 24 hours? A. No. I could under perfect conditions that you first mentioned, but not under adverse conditions.

Q. Now why do these cables have to be larger, if they are taken underground than if they are over the structure? A. Well, it is the lead covered cables that—the same capacity of cable is used, of copper cable is used, and that has to be covered with lead instead of with rubber insulation, which increases the diameter of your cable, about,
972 maybe, an inch.

Q. An inch? A. Yes, sir.

Mr. LaMotte: That is all.

Re-redirect examination by Mr. Nichols:

Q. You were asked about whether the traffic on the spur had changed during the last 20 years. Now, in the last 20 years there have been two subways built there, has there not? A. Yes.

Q. Have you observed the effect of new and alternative transportation facilities in respect to old facilities? A. Yes.

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Q. Is that a change which works gradually or at once? A. Gradually.

Q. Gradually. Do you recall the fact that the traffic ten years ago on this spur was much less than it is today? A. I have not the figures in my mind, only generally speaking it was.

Q. Since ten years ago there has been one of those subways built, the Lexington Avenue? A. Yes, 1916.

Q. And notwithstanding that fact, already the spur traffic has greatly increased over what it was ten years ago?

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Mr. LaMotte: I object to that as leading.

Q. Well, how does it compare with what it was ten years ago?

Mr. LaMotte: I object to that, unless he knows as a matter of fact.

The Court: Do you know?

The Witness: Generally speaking, yes, there has been an increase.

Mr. LaMotte: No, I object to the question.

A. (Continued.) I can produce those figures more accurately at a future date.

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GEORGE W. BURPEE, called as a witness on behalf of the claimant, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. What is the nature of your business, Mr. Burpee? A. I am a civil engineer employed by the firm of consulting engineers of Coverdale & Colpitts.

Q. Consulting engineers? A. Consulting engineers, yes, sir.

976 Q. In this city? A. 66 Broadway, New York City.

Q. What is the nature of their business? A. The nature of Coverdale & Colpitts' business is that of general consulting engineers, specializing on examinations of businesses and dealing very largely with the protection of financial houses in making investments.

Q. What has been your experience as a civil engineer? A. I was graduated from the Massachusetts Institute of Technology in 1906. For a
977 period of seven months I was assistant engineer on the Louisville & Nashville Railroad at Louisville. Beginning with the 1st of February, 1907, until the 31st of August, 1921, I was continuously, with the exception of seven months in 1911, with Westinghouse, Church, Kerr & Company, New York City, engineers and constructors. This latter company merged on June 1st, 1920, with Dwight P. Robinson & Company, also of New York City, who still continues the business similar to that of Westinghouse, Church, Kerr & Company.

From 1907 to 1912, I was in various positions as
978 field engineer and assistant superintendent on construction of various types.

From 1912 to 1919, I was engineer in charge of that company, in responsible charge of various projects, both engineering investigations, and also construction. Some of the engineering investigations that I made during that time include the valuation of the electric railway systems then owned by the New York, New Haven & Hartford Railroad Company in Connecticut and Massachusetts; valuation of the Savannah & Northwestern Railway of Georgia; valuation of the Bangor Street Railway, Bangor, Maine; valuation of all the in-

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dustrial plants of the American Agricultural Chemical Company in various parts of the United States; reports for the Canadian Pacific Railway Company on the electrification of their mountain districts in British Columbia; also on the operation of their terminals at Montreal; valuation for the Canadian Northern Railway Company of terminal property in Winnipeg; report for the Toronto, Hamilton & Buffalo Railway on the matter of grade separation, and the general railway situation in Hamilton, Ontario; report for the Erie Railroad Company on reduction of grade and revision of alignment between Cleveland and Youngstown; report on the railroad property and public utility property of the Cienfuegos, Palmira & Cruces Railroad Company in Cuba. These are all investigations of which I had complete charge from beginning to end.

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In addition I had charge of the construction of various industrial plans, including five plants for Armour & Company, located, one in Cuba, and the remainder in the United States; three plants for the General Chemical Company, and the other plants for the Canadian Crocker-Wheeler Company and the Canadian Salt Company.

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In 1917 I was in charge of the construction of Camp Hill at Newport News, and twenty-one of the warehouses which form a part of the port of embarkation. From November, 1917, until the end of June, 1919, I was engineer in charge for Westinghouse, Church, Kerr & Company, of the execution of their part of the contract for United States Nitrate Plant No. 2 at Muscle Shoals. Westinghouse, Church, Kerr & Company's part of the contract embraced about 40 per cent. of the total work.

From July 1, 1919, until the termination of my

982 *Claimants' Witness—George W. Burpee—Direct.*

service with that company, I was Managing Engineer in charge of the execution of a considerable proportion of the work done by that company, responsible for negotiation of some of the contracts, design, purchase of material, and preparation of estimates, and completion of the work within the estimate.

On September 21, 1921, I entered the employ of Coverdale & Colpitts, and since that time have had charge of the valuation of the Manhattan Railway property made in 1921 and terminated in the early
983 part of 1922; such investigations for the Manhattan Company in connection with the plan of readjustment of the lease between the Manhattan Company and the Interborough; valuation of the New York, Chicago & St. Louis Railroad Company's property, the Lake Erie & Western Railroad Company's property, the Toledo, St. Louis & Western Railroad Company's property in connection with the recent formation of the new Nickel Plate System; the investigation, complete, of the physical property, the operation and future expectations of the Chicago & Alton Railroad Company; and the
984 investigation of other properties along the same general lines.

Q. Have you made a study of the structures subject to condemnation in this proceeding? A. I have, yes, sir.

Q. And of the values of those structures? A. I have, yes, sir.

Q. Have you also made a study of the value and the cost involved in changes which would be the result of a determination by the Transit Commission in respect to taking care of the station at Third Avenue and East 42nd Street, pursuant to the application that has been made to them? A. Yes, sir.

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Mr. Nichols: I will offer in evidence a map which is entitled, "Interborough Rapid Transit Company, Manhattan Railway Division, Third Avenue Line. Proposed Plan of station at 42nd Street account of removal of 42nd Street branch Drawing No. 22,941."

Mr. LaMotte: I object to it as immaterial, irrelevant and incompetent.

The Court: What is the map, again?

(Mr. Nichols' offer was read.)

Mr. Nichols: This is the map which is attached to the petition. It was submitted to the Transit Commission, to the City and to the property owners many weeks ago. It is not the result of our initiative; it is the result of the letter written to us by the Transit Commission, that we had better prepare a definite petition to meet this situation, and the suggestions that were made at the time when the trial began, September 27th.

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This is the only thing that at this time we have as the basis of estimating the cost of damages actually occurring to us as the result of this change. Now that may be modified by some finding of the Transit Commission not in accordance with this map, but we must proceed upon some definite basis in our estimates.

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The Court: It will only be received as your idea of what will be necessary to be done.

Mr. Nichols: Yes, your Honor.

The Court: It is not as yet accepted by the Transit Commission; they may not adopt it at all; but this represents your idea of what you feel that you will have to do, and the basis upon which you estimate your damage.

Mr. Nichols: Yes.

Mr. LaMotte: I renew my objection, and state

988 that it is immaterial, irrelevant and incompetent, that it has not been shown by competent evidence that that is necessary to be done.

The Court: That is true, at present.

Mr. LaMotte (continuing): —by the removal of this track, and certainly at this stage of the game it is improper in evidence. That is my view of it.

The Court: I am not receiving it as proof positive that it is required, but it is simply a plan that they have drawn up, which they feel they will be required to adopt.

989 Mr. LaMotte: They can use it as an exhibit, I mean for identification. I do not see how it is admissible.

The Court: It is not binding upon the Court, but I will receive it as an exhibit.

Mr. Nichols: It is not intended for that purpose, your Honor; I do not wish to make any misrepresentation about this map, as anything that has been approved by the Transit Commission. It merely represents, as your Honor has stated, our best judgment as to what will have to be done there.

Mr. LaMotte: May I note my exception?

990 The Court: Yes. I will receive it for the purposes indicated only. What is it, a map of proposed changes, is that what you call it?

Mr. Nichols: Proposed changes at 42nd Street and Third Avenue.

(Map received in evidence and marked Claimant's Exhibit G.)

Mr. LaMotte: Before you proceed with the examination, I would like to cross examine this witness on it.

The Court: Yes, you may.

Claimants' Witness—George W. Burpee—Cross. 991

Cross examination (preliminary) by Mr. LaMotte:

Q. Mr. Burpee, I believe? A. Yes, sir.

Q. How old are you? A. 40 years.

Q. How long have you been in the City of New York? A. New York City, since—my headquarters, business headquarters have been here since 1907.

Q. And all that time you have been connected with this firm? A. With Westinghouse, Church, Kerr & Company, from February 1, 1907, until August 31, 1921, with the exception of seven months, as I stated, during 1911. 992

Q. How long have you been connected with this firm that is working for the Railroad Company? A. With Coverdale and Colpitts?

Q. Yes? A. Since September 1, 1921.

Q. And that company has been retained by the Interborough to estimate the value of the railroad's interest in the City of New York, has it? A. You mean, in connection with this 42nd Street condemnation?

Q. No, in connection with the matters that are before the Rapid Transit Commission? A. No, sir, not retained by the Interborough. I do not want 993 to be technical. We have been retained, we were retained in 1921 by the Manhattan Railway Company, but not by the Interborough.

Q. But you were retained by the Manhattan? A. Yes, sir.

Q. And are you still working for the Manhattan along those lines? A. Not along lines of valuation. We are still doing work for the Manhattan Railway Company, yes, sir.

Q. That is how many years; three years? A. That is approximately, a little over two years.

994 *Claimants' Witness—George W. Burpee—Cross.*

Q. A little over two years. A. Since 1921.

Q. Do you know when this firm was engaged in this proceeding? A. In the 42nd Street condemnation?

Q. Yes. A. Yes, sir.

Q. When? A. I could not state the exact date, but it was approximately two months ago.

Q. You are doing the work for the firm, is that correct? A. That is correct, yes, sir.

Q. What position do you hold in that firm? A. That of an employee.

995 Q. What, as an engineer? A. An engineer, yes, sir.

Q. Now, all this raft about experience that you have testified to on your qualifications, was there anyone else connected with you in that work? A. There was. I was in charge of that particular work.

Q. Did you hold the same relationship to the people who had that work to do as you hold to this company that you are now working for? A. I am afraid I do not understand that question.

Q. Well, did you do this work which you have testified to, in Canada, in Cuba, and all over the

996 United States—

The Court: As an employee?

Q. As an employee of a company or people who had the job of doing the work?

The Court: Or was it your own work?

A. Oh, altogether as an employee.

Q. As an employee? A. Altogether, yes, sir.

Q. What experience have you had in the way of building an elevated street railway? A. I never built an elevated street railway.

Q. Did you ever have any experience in the operation of an elevated street railway? A. No, sir.

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Q. Were you ever called upon to finance an elevated street railway? A. No, sir, not an elevated street railway.

Mr. LaMotte: Go ahead.

Direct examination (continued) by Mr. Nichols:

Q. Was your work for the Manhattan Company the basis for the formulation of plans of readjustment of their financial relations with the Interborough? A. It was, yes, sir.

Q. And in connection with that work it was necessary to obtain the valuation of the structures and the conditions of operation? A. It was, yes, sir.

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Q. And of the probable future results of operation? A. Yes, sir.

Q. What relation have you had to street railway matters? A. In 1908, as I testified, I was in charge of a valuation which was made for the New York, New Haven & Hartford Railroad Company of its trolley properties in Rhode Island and Connecticut, totaling about a thousand miles; also subsequently to that the valuation of the Bangor Street Railway. At the present time I am in charge of work which the firm is doing in connection with the reorganization of the New York Railways, representing the Lexington Avenue mortgage bondholders and the Sixth Avenue stockholders, which also involves the question of operating methods, cost of operation, and future prospects.

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Q. In your work, specializing for concerns which are being reorganized, do you estimate the probable results of future operations as part of your work? A. Yes, sir, usually.

Q. And you have done this in respect to the Manhattan Railway Company? A. Yes, sir, we did.

1000 Q. For the purpose of actually entering into a new contract with the Interborough? A. That is correct, yes, sir.

Q. And has that contract been entered into? A. Yes, sir, that contract was entered into.

Q. Upon the basis of your work as the Consulting Engineer? A. Partly on the basis of our work, yes, sir. There were other engineers engaged, representing the Interborough and the 5 per cent. bondholders.

Q. Well, I mean the Manhattan entered into that
1001 new obligation as a result of your work? A. Yes, sir.

Q. Now, taking first the structures to be removed that are now existing in the area of condemnation, will you describe those structures and your method of valuation of them, from the basis of their reasonable present value?

Mr. LaMotte: Just describe them.

The Court: Suppose you ask him to describe the structures first. Do not involve two matters in your question.

Mr. LaMotte: Divide your question.

1002 Q. Will you describe these structures first? A. The structure involved is a wrought iron structure extending from Third Avenue and 42nd Street to approximately the east line of Park Avenue. The foundations are of brick and stone.

By the Court:

Q. What do you mean by the foundations; on which the pillars rest? A. The foundations on which the columns rest, yes, sir.

Q. Or the columns rest. A. They are of brick and stone, and extend an average depth of 11 feet below the street surface. The tracks are supported

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by columns which are spaced longitudinally, that is, east and west, approximately 43 feet on centers, a row of columns for each track. The tracks are carried by wrought iron lattice girders, two longitudinal girders to each track. The columns are spaced in a north and south direction something over 40 feet, and—

Q. Apart, do you mean? A. Yes, sir, on centers.

Q. What do you mean by on centers; center to center? A. Center to center, in a north and south direction, yes, sir. The two tracks are tied together at each pair of columns, by wrought iron

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lattice girders. There is a station which pertains strictly to this spur at Park Avenue. The station at 42nd Street is used jointly, of course, by the Third Avenue and by the spur.

By Mr. Nichols:

Q. At Third Avenue, you mean? A. At Third Avenue and 42nd Street, is used jointly by the Spur and by the Third Avenue line, yes, sir. Do you wish me to describe the methods used in this valuation?

Mr. LaMotte: No, you just answer questions. I

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want to object to that.

The Court: Have you described the structure, is that as far as you wish to go?

The Witness: There is an infinite amount of detail in connection with the construction of the structure. It is just a question of how general a description or how detailed a description you want.

Q. Well, the structure in general both as to its physical characteristics and its operation, is the type of elevated structure with which we are familiar throughout the City of New York? A. Yes, sir, it is.

Q. And in operable condition? A. Yes, sir.

Q. You might describe possibly the station at Park Avenue in somewhat detail; you have described the pillars and the girders. If you will now, describe the station? A. The station at Park Avenue is a steel frame building supported on the structure itself, with wooden sides. It has only the space necessary to facilitate passage of passengers through the turnstiles, and the office for the employee who makes the change. It has platform space with canopies to protect the passengers on
1007 the platforms from rain, and it has windshields, also provided with pipe rails; in fact, pipe rails extend the whole length of the structure, that is a balustrade to prevent passengers from falling off the platforms.

Q. And the structural fabric which you have described, does that differ from other forms of structure with which you have been familiar; bridge construction or steel structural work, building construction? A. No, sir, only in detail.

Q. Only in detail? A. Not in general at all.

Q. Are you familiar with the elements of cost
1008 and value in relation to a structure of that type? A. Yes, sir.

Q. Are you familiar with the elements of value in relation to structures similar to that of the station which you have described? A. Yes, sir.

Q. As to the track, is there anything with respect to the track which differs from that of the ordinary tracks with which you are familiar? A. No, sir. The track on this structure, of course, differs from a steam road in that the rails are bonded to permit the passage of the electric current, and there is also a third rail which is used as a conductor for the electric current to the cars.

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Otherwise, the track structure is identical, and the structure is practically the same as, or at least similar to, the track structure of any electric road operated by the third rail system.

Q. And you are familiar with that mode of operation? A. Yes, sir.

Q. And the elements of cost involved? A. Yes, sir.

Q. The foundations of the structure, are you familiar with those? A. Yes, sir.

Q. You might describe the nature of the work, briefly, the foundations? A. The foundations of the columns vary in depth from approximately 8 feet to a maximum of 28 feet. In general, they are piers with an average dimension of 8 feet on a side. They taper to a square of about 4 feet on a side at the top. They are of brick masonry, with stone caps, which stone caps support the castings, that is the cast iron bases on which the wrought iron columns rest.

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Q. Will you describe the stairways, or the stairway at Park Avenue, which is the only one within the area at present? A. The stairway at Park Avenue is supported on columns carried on wrought iron stringers. It has hand rails on both sides and has a canopy over the top. It leads from the sidewalk to the station platform.

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Q. You spoke of some of the column foundations being 20 feet deep? A. Three of them are over 20 feet in depth; one 23 feet, one 26, and one 28 feet, yes, sir.

Q. You are familiar with foundation structures of that character? A. Yes, sir.

Q. And with the stairway? A. Yes, sir.

Q. Have you measured the quantities and volumes of the different component elements of the

structure? A. We have, yes, sir, taking as the basis for such measurement the records which are kept by the Interborough Rapid Transit Company, and which are now in the office of the Chief Engineer of the Interborough.

Q. That is from actual, exact dimensions? A. Yes, sir, the records as made at the time the foundations were installed.

Q. And as to the fabric of the structure and the other members, have you ascertained the volume, the quantifies? A. We have, yes, sir. We have
1013 taken the quantities from the plans of the structure.

Q. How do you arrive at your values of those quantities?

Mr. LaMotte: I object to that. That is a matter for cross examination.

The Court: I think that is so. He can state what his values are.

Mr. LaMotte: State his conclusions.

The Court: He can state what his conclusions are.

Q. Will you state the values which you have
1014 given to the various elements of the structure within the condemnation area?

Mr. LaMotte: Do not answer that. I would like to ask this witness two or three preliminary questions.

The Court: Proceed.

By Mr. LaMotte:

Q. Have you included in your estimate the stairway that leads from the station to the sidewalk at Park Avenue? A. We have, yes, sir.

Q. Have you made, given any consideration at all to the right of the City, if it has any, to cause

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the removal of the supports of the railroad from the street to the sidewalk?

Mr. Nichols: I object to that.

The Court: What are you referring to now, pertaining to the stairway?

Mr. LaMotte: No, pertaining to the supports of the structure. I just want to bring out, so as to frame my objection in the proper way.

The Court: All right. Are you asking him a question relating to all the columns?

Mr. LaMotte: The columns.

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The Court (continuing): That support the entire structure?

Mr. LaMotte: Yes.

A. No, sir, I have taken the structure as it exists, without regard to that question.

Mr. LaMotte: Now, I object to this testimony on the ground that it is immaterial, irrelevant and incompetent, and for the special reason that no foundation has been laid for reproduction cost. The City's position is that before this testimony is relevant and admissible, the company must show that a reasonably prudent man would reproduce this railway at the present time, and in order to

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show that the company must first go into the earning capacity of the road in order to lay a foundation for the admissibility of this evidence. I object upon the further ground that this estimate includes the valuation of a stairway which the City contends is illegally located.

The Court: Which the City what?

Mr. LaMotte: Which the City claims is there without authority, and the estimate is made without regard to the right of the City to compel the company to remove the columns which support the structure from the street to the sidewalk.

Objection overruled. Exception for the City.

1018 *Claimants' Witness—George W. Burpee—Direct.*

By Mr. Nichols:

Q. Will you proceed to give your valuations of the portion of the structure which you made?

Mr. LaMotte: There is another objection I would like to make to that form of question. Of course, I think as far as the claimant can go in a proceeding of this kind is to qualify their expert, describe the property condemned, ask him to say what it is worth to reconstruct or what it will cost to reconstruct. Any other detail as to the division of that sum or the method in which he makes it up
1019 is all a matter for cross examination.

The Court: I think that is so. You haven't any objection to that; let him give it.

Q. Yes, will you give your valuation—

The Court: Let us see, in the evidence there were two things, there was the structure of the piers and the sheds; I think they gave separate values as to those.

Mr. LaMotte: My objection does not go to this. I understand this estimate has nothing to do with what the company claims as the cost of the re-arrangement of the station; he is merely asking
1020 the witness the cost to reproduce.

The Court: The structure as it stands now.

Mr. LaMotte: In the condemnation area?

The Court: Yes. That is true, is it not?

Mr. Nichols: Yes, assuming we get no authority from the Transit Commission whatever, and the whole thing has to come down.

The Court: Yes, that is all right. He can give his figures, what he values them at.

Mr. Nichols: Yes.

The Court : Have you got your record there? The total figures.

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A. Yes, sir. The estimated cost to reproduce new the existing structure, within the condemnation area, as of October, 1923, is $247,195. The estimated cost, less depreciation, is $201,322.

Cross examination by Mr. LaMotte:

Q. Mr. Burpee, have you included in your estimate the circuit breaker? A. We have included the circuit breaker house.

Q. Have you included the circuit breaker? A. We have included one circuit breaker, which serves the spur.

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Q. Have you included the breaker which serves the Steinway tube? A. No, sir.

Q. Have you included the cable which runs from the circuit breaker to the Steinway tube over the structure? A. We have, yes, sir.

Q. The cable which runs the Steinway tube? A. Yes, sir.

Q. How much have you allowed in your estimate for that cable? A. Cost new, $4,800; less depreciation, $3,840.

Q. What is the value of the circuit breaker, at what did you estimate the value of the circuit breaker that you have included in your estimate? A. The circuit breaker complete, $1,380.

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Q. That makes how much total?

The Court: That is less depreciation, is it?

The Witness: The cost for the circuit breaker is cost to reproduce new, that is combined in finding the cost of reproduction new, less depreciation, with other figures. The cost to reproduce new would be 65 per cent. of the $1,380.

Q. What is the total amount which you have included in this estimate, which relates to the circuit breaker and the cables that run the Steinway tube? A. $5,180.

1024 Q. Is that all? A. That is the cost of the feeders and the circuit breaker, but does not include the cost of the duct line. There is at present a duct line that leads from the base of the column—

Q. What have you included for the duct line? A. For the duct line we have included $1,476.

Q. Is that in connection with the cable that runs the Steinway tube? A. That is, yes, sir.

Q. And that makes how much altogether? A. $7,656 for the cost to reproduce new. I would have to make a calculation before I could give
1025 you the cost less depreciation, because of the fact that—

The Court: Do that. Do you want that done?

Q. Yes, can you do it now? A. I can, if someone will be kind enough to lend me a pencil.

(Witness computes.)

A. (Continuing.) $6,313.

Q. That is the present value? A. That is the present value, yes, sir.

The Court: Of what? What is that figure?

The Witness: That is the circuit breaker, the cables to the Queensborough subway, and the duct
1026 line to the Queensborough subway.

Q. Does that item include and embrace everything that is on that structure in connection with the Steinway tube?

The Court: And the circuit breaker, I understand.

Q. (Continuing.) And the circuit breaker? A. So far as I know it does, yes, sir. These values—

Mr. LaMotte: Now I move to strike out his testimony with respect to those items, upon the ground that under the Act the City does not acquire them.

The Court: I will deny your motion at this time.

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Mr. LaMotte: Exception.

The Court : You have got this item now in a separate figure, on cross examination, and I will consider it later on.

Q. Have you included in this estimate the cost of the removal of the three columns which support the station at Third Avenue? A. I have, yes, sir.

Q. Just state, what you have done and what you have included in your estimate with respect to the reconstruction of the station at Third Avenue after the removal of this spur?

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Mr. Nichols: Your Honor, I think counsel forgets that we have only gone into—

Mr. LaMotte (interposing): But he says he has included the cost of the removal of those columns.

Mr. Nichols: The cost of removal only.

Mr. LaMotte: I know it.

Mr. Nichols: We have not got to the part of reconstruction.

Mr. LaMotte: That is also in here.

Mr. Nichols: But there has been no testimony as to the cost of reconstruction yet; that is a separate item.

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The Court: I did not understand that he included in the figures $201,322, the entire cost of replacing the station. This was just the value within the area of condemnation.

Mr. LaMotte: But he has done more than that, Judge, from his testimony. I simply want to get this thing clear, and eliminate everything that is likely to come up on the outside.

By Mr. LaMotte:

Q. You testified that you have provided for the replacement of the three supports which hold up

1030 that station and which are included within the area condemned in this case; that is correct? A. That is correct, yes, sir.

Q. Where did you replace them; where did you move them to? A. In the figures which I have given, I have not—

The Court: Not replaced them?

A. (Continuing.) I have not replaced them. I have estimated the cost of replacing the structure within the condemnation area, including those columns, but I have not given any figures which

1031 would indicate how I intended to replace them if they were taken away.

Q. That is all right; then you have only included in your estimate the value of those structures as a part of the property included within the land taken? A. Yes, sir.

Q. Did you make up this estimate from a personal examination of this structure? A. I did make a personal examination, yes, sir.

Q. No, no; did you make up your estimate, that is the figures, from a measurement of the structure conducted by you? A. No, sir.

1032 Q. Did you go on the ground with your men and estimate from actual measurements the quantities which you have included in your estimate? A. No, sir.

Q. This estimate which you have made is based upon figures as to measurements which you have obtained from some other source? A. That is correct, yes, sir.

Q. Did you check up, by actual measurements of this structure, the figures which were given to you, upon which to estimate this reproduction cost? A. Not by actual measurement, no, sir.

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Mr. LaMotte: Well, I submit that I do not see how I can cross examine a witness like that. I must move to strike his testimony out. He simply has adopted the figures as to quantities which have been turned over to him by somebody else. They may be correct or not correct. I cannot cross examine him upon this.

The Court: I think there ought to be proof here that the figures that have been submitted to him are the actual measurements of that structure.

Mr. Nichols: Yes, they are; they are the actual measurements, of which they have a record of the figures in the Manhattan and Interborough companies. It is not necessary to go over that again, it seems to me. Those are the records upon which the companies operate.

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The Court: I think you ought to have some proof that the figures upon which he has based his estimate are the actual measurements of that structure; that is, if they are the original plans of the structure, I think you ought to show that the structure was erected according to plans, and that it has not been changed.

Mr. Nichols: Well, that is the case. Mr. Reeves here, who has been representing the company all these years and is familiar with the plan, has collaborated with him and furnished these figures out of his own knowledge of the plans and the actual structures.

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Mr. LaMotte: Just let me follow this up.

The Court: I will deny your motion, subject to connection of these figures.

Q. Now let me understand. What you have done is to take the quantities which have been given to you, and apply your estimate of the cost of reproducing just that much quantity of the different

1036 materials which go to make up that structure? A. No, sir, not the quantities, only the dimensions.

Q. Oh, I see. Well then, the quantities which you used and to which you applied your estimates of cost, were the result of measurements which were turned over to you by someone else? A. Why, measurements which we procured ourselves from the books of record.

Q. Yes, but not from an examination of the property? A. It would be impossible to examine the foundations without digging up every foundation.

1037 Q. Well, it is not impossible to examine everything above surface, is it? A. No, sir, it is not.

Q. And you have not done so? A. We have not measured it, no, sir.

The Court: Who gave you those measurements?

The Witness: Measurements on file in the Chief Engineer's office.

Q. How many foundations did you figure on? A. 45.

Q. Do you know how many of those foundations were originally there, and how many were as a result of subsequent building? A. No, sir, I do not.

1038 Mr. Nichols: We will object to that as incompetent, irrelevant and immaterial, as to how many were there. The question is, what is the structure at the present time, which the City is taking, not what might have been there ten years ago.

Mr. LaMotte: Well, I don't know about that; let us see.

Q. When that structure was first put there, there was no subway underneath 42nd Street, was there? A. No, sir, there was not.

Q. At the time of the construction of the subway it became necessary to build additional supports

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for the columns of the road, is that correct? A. Yes, sir.

Q. Do you know that? A. I know that that is true in certain instances, yes, sir, from the records.

Q. Now, do you know what portion of those supports that you have included in this estimate were necessitated by the construction of the subway under 42nd Street? A. At the present moment I do not. I have a record of that.

Q. You have included in this estimate not only, then, the old foundations, but the foundations which were made necessary by the construction of the subway? A. That is true, exactly as they are today.

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Q. Do you know, as a matter of fact, or were you informed, whether the Manhattan or the Interborough paid for these additional foundations, or don't you know? A. I don't know who paid for them.

Q. You don't know who paid for them? A. No, sir.

Q. You were given these dimensions and you included them in your estimate? A. They are part of the structure as it exists today.

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Q. Yes, that is what you consider to be part of the structure?

Mr. Nichols: I object to the form of the question or the statement.

The Court: I think I will allow it. It bears upon the nature of the structure, as to what the foundation rests upon.

Mr. LaMotte: Yes, it bears upon who is responsible for it.

Mr. Nichols: It is a question of whose property they are.

Mr. LaMotte: Yes.

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Mr. Nichols: They are part of the railroad that is being condemned.

Mr. LaMotte: It is perfectly proper to dissect it and bring out the fact that he has included them.

Mr. Nichols: Surely.

Mr. LaMotte: I don't know how much he has included, though.

Q. Did you figure on rubble or concrete in your foundations; that is, rubble stone or concrete? A. We figured on stone where stone was used, on concrete where concrete was used.

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Q. Now, how much of those foundations were made up of stone and how much of concrete? A. We have taken them all as if they were all concrete.

Q. Oh! A. As a matter of fact, we adopted that assumption because it gave a lower value than the use of brick.

Q. You adopted that because it would be of less cost? A. It gives a lower value, and that is the way the foundations would be reproduced today, not in the more expensive brick.

Q. What do 45 piers or foundations average per

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pier or foundation? A. In money?

Q. In money. A. Approximately $600 each, exclusive of any overheads.

Q. Now, take the structural steel; how many tons of steel have you figured on? A. 643 tons of structural steel, 72 tons of—do you wish the cast iron and the—

Q. I will come to that again. How many tons of structural steel? A. 643 tons.

Q. Well, have you included in that structural steel the cast-iron bases? A. The cast-iron bases aggregate, with the fenders, 72 tons in addition.

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Q. And that estimate was based upon the dimensions which were given to you by the engineers of the Interborough? A. On the dimensions which we took ourselves, off the records of the structure in the Interborough's office.

Q. Yes, but not by actual measurement? A. Not by actual measurement in the field, no, sir.

Q. How many tons did you estimate in the spread top columns? A. In each column?

Q. What they call the spread top columns? A. I have not those figures with me. My recollection is approximately 3,440 pounds per column.

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Q. How many columns? A. I would have to verify that. There are 45 columns; not 45 spread top columns.

Q. Can you tell us how many pounds of steel are in your spread top columns? A. I cannot, with the figures that I have here. I have all those details. I have details of every part of the structure, but I haven't them in these notes.

Q. How many tons on the square top columns? A. I would have to refer to other figures for that. I can supply all those figures.

Q. How many tons of steel in the longitudinal girders? A. I can supply those figures; I haven't them right here.

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Q. How many in the transverse girders; you cannot supply that? A. I make the same answer to that.

Q. The same answer? A. I have not the subdivision of the steel.

The Court: Perhaps we had better not waste time on that until he gets those figures.

The Witness: I have all those records, which I would be very glad to submit.

The Court: You would like to have them, would you?

1048 Mr. LaMotte: Yes, I would like to have them, because then I can make my comparison.

The Court: Suppose we pass from that, then, this evening, and we will have the figures in the morning. Take up something else.

Q. What price per ton erected did you use? A. $120, exclusive of overheads.

Q. What were the overheads? A. Overheads, engineering, administration, legal expenses, interest during construction, cost of financing, which on the total valuation amount to approximately
1049 $34,000; that was the total overheads, approximately 15 or 16 per cent. This $120 is the contract price, the price which you would have to pay—

Q. With the overhead it would be 16 per cent. more, is that right? A. The cost to the Manhattan Company of reproducing this structure would be approximately 16 per cent. in addition to this.

Q. Did you base that price upon any recent contract that has been made? A. Yes, sir.

Q. Where? A. Section 1 of Route 52.

Q. Where is that? A. That is in Flushing. Those were the most recent bids that were submitted to the Transit Commission for elevated rail-
1050 way construction.

Q. What was that bid? A. The average of all the bids—

Q. I am talking about the bid upon which the contract was let? A. The let bid of that location was $109, in May, 1923.

Q. Where did you get that information? A. From the Transit Commission, the Chief Engineer's office.

Q. And have you added anything for overhead expenses to that? A. There would be an overhead applicable to that in considering the whole line.

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Q. Does that not include the overhead, that $109? A. The contractor's overhead, yes, sir. That $120 also includes the contractor's overhead.

Q. No, I am talking now about this bid, this contract? A. The $109 includes the same items that I have included in the $120, exactly the same items.

Q. And that was $109; it was not $99.80, that bid? A. It was $109, to the nearest dollar.

Q. Would it make any difference in your estimate if that bid was $99.80? A. It might.

Q. What difference would it make?

The Court: $10 a ton, would it not?

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Mr. LaMotte: Well, in his opinion. He has not followed it, anyway.

A. Not necessarily, because that is one of the factors that we consider in determining what a fair price would be,

Q. Well, even at that, even at $109, you have estimated yours at $11.00 a ton more than this contract, the most recent contract was let at? A. The let bid, yes, sir. I stated that I based this $120 on the bids for that work, and the let bid is not necessarily an indication of the best figure to use in an estimate.

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Q. Oh! A. Sometimes it is, sometimes it is not.

Q. You took the average, and not the one upon which the contract was let, is that it? A. No, sir. If you want an explanation—

Q. I don't want it. A. (Continuing.) I can tell you exactly what I did.

Q. Is not the highest bid that was made on that contract $104? A. Not on the contract that I am talking about, no, sir; not on Route 52, Section 1, the bids opened in May, 1923.

Q. Well, have you examined the contract for Section 2? A. No, sir, I have not.

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Q. Did you ever see that? A. No, sir.

Q. If the highest bid on Section 2 was $104, and the contract on Section 2 was let for $99.80, would that not make some difference in your opinion as to what this would cost? A. I should certainly give it consideration, yes, sir, because I am only trying to determine what is the proper price to use.

Q. Now, refer to your cast iron, cast iron column bases. How many pounds of bases for the spread top columns? A. I will have to answer

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that in the same way that I answered the other questions; I haven't any subdivision of the bases here. I have the total tonnage in all the bases.

Q. All right, now go right down. How many pounds of base for spread top columns; the same answer? A. I have not the segregation of that.

Q. What price per pound did you give for that? A. 10 cents a pound.

Q. Does that mean for all those items I have just asked you about, cast iron columns? A. All the cast iron work on the bases, the bases and the fenders.

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Q. Ten cents a pound? A. Yes, sir, $200 a ton.

Q. Is that erected? A. That is in place, yes, sir.

Q. In place? A. In place.

Q. What do they cost, without being in place, per pound? A. I could not segregate that here. I have a separation of labor and material. That is lower than the let bid on Route 52, Section 1; considerably lower.

Q. Now referring to the painting; what did you allow per ton for painting steel? A. The painting is included with the erected price of $120.

Q. You cannot segregate that? A. I can segregate it, yes, sir.

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Q. You cannot at this time? A. I cannot right at this moment; I would have to get the details.

Q. How many drip pans did you figure, and at what price? A. I figured 1,322 square feet, at $1.10 a square foot.

Q. You do not know how many pans there were? A. No, sir, I cannot tell that without reference to detail.

Q. Or how much was in each pan? A. No, sir. I can supply all that information; there is a great deal of it.

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Q. How many tons of rail did you use, and what price did you allow? A. I did not calculate the plate rail—oh, you are talking about running rail?

Q. Yes, running rail? A. I figured that in lineal feet, 2,135 lineal feet of track. That is separable into tons of rail, of course. I have not that figure here, but I could also—it is 90 pound rail.

Q. Well, they are paid for by the ton, are they not? A. The rail, yes, sir; the rail is bought by the ton, but in computing our unit prices we figured all the quantities making up one lineal foot of track, and then based our unit cost on the cost per lineal foot of track.

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Q. Well now, in figuring up that, what have you allowed a ton for rails? A. I can give you the unit price we used for rail; $50.60 a ton, delivered at the job, per gross ton of 2,240 pounds.

Q. And how much would that be laid? A. We figured the labor on laying at 70 cents per lineal foot.

Q. In order to get at your lineal foot value—could you give us the total amount that you have allowed for rails in your estimate? A. Not without another calculation, no, sir.

Q. The total amount? A. I can give you the total amount for track, because—

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Q. You mean including ties and everything? A. Including ties, yes, sir.

Q. But you cannot for the rails? A. Not without a calculation, no, sir; for the simple reason that the unit we adopted was a lineal foot of track.

Q. Well, at what price did you figure your ties? A. The ties we figured at $48.00 per thousand feet, board measure.

Q. Is that the delivery price or the constructed? A. That is the delivery price; the price of laying is included in the 70 cents per lineal foot of track.

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Q. How about your guard timbers? A. Guard timbers were figured at the same price per thousand board feet, of $48.00.

Q. Now you say you can give me the total value or your total estimate of the value of the rails and the ties and the guard timbers, all put together? A. Yes, sir.

Q. What is it? A. On tangent track—

Q. On what? A. On tangent track. It was necessary, in order to price the track in this way, to divide it into track that is straight track and track which is curved. The curved track has what is

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known as super elevation in one rail, which requires that the outside rail on the curve has to be shimmed up, it requires additional cost of labor in laying it, and in addition to that there is an inside check or guard rail, so that on curved track you have the extra labor of laying and the extra cost of the guard rail; so that the track is divided into two classes, when priced by the lineal foot.

Q. All right, give me the cost of each? A. Straight track is $6.00 per lineal foot.

Q. And what is the other? A. Curved track, $10.00 per lineal foot.

Q. And how many lineal feet have you estimated

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in each case? A. 1,600 feet of straight track, 535 feet of curved track.

Q. And what have you given as the total cost of each division? A. The total cost of straight track, to reproduce new, $9,600; curved track to reproduce new, $5,350. Present value, 25 per cent. of the cost to reproduce new. So that the present value included for track work, combining both straight and curved, was $3,738.

Q. You mean you gave only 25 per cent. of the new cost? A. 25 per cent. of new cost.

The Court: That is depreciation?

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The Witness: That is the condition per cent.; 75 per cent. depreciation, 25 per cent. present value.

Q. What did you figure as to the value of the comfort building?

The Court: Comfort stations.

A. You mean the trackmen's house?

Q. No, that is a locker room. It is divided up into comfort station, locker room, switch cabin, and the circuit breaker house. A. Yes, that is one of the facilities of the station at 42nd Street and Third Avenue.

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Q. Now can you give me what you have allowed for each one of those? These are all within the area of the part condemned? A. Yes, sir. The trackmen's house—

Q. Is that what we call the locker room? A. Yes, sir, that is what has been defined here by Mr. Reeves as the locker room.

Q. Yes. What have you for that? A. Cost to reproduce new, $2,574; prevent value $1,802.

Q. How much depreciation? A. That is 70 per cent. condition, and that means 30 per cent. depreciation. The circuit breaker house, present cost

1066 or cost to reproduce new, $780; present value 70 per cent. of the cost to reproduce new, or $546.

Q. Now the switch cabin, what is that? A. The switch cabin I have included with the platform and canopies on the 42nd Street and Third Avenue station, which I have lumped together.

Q. Do you know what you have allowed for it? A. Not for that item separately, no, sir. I can—

Q. Do you know what you have allowed for the comfort stations? A. No, sir, not separately.

Q. With what have you included that item? A.
1067 In the remainder of the station facilities at 42nd and Third Avenue.

Q. Well, are they not included in this estimate? A. Oh, yes, I beg your pardon, I misunderstood your question. I have included those items in the cost of the station facilities at 42nd and Third Avenue.

Q. Yes, but you have included them in this estimate? A. Yes, sir, exactly.

Q. Now, do you know what you have allowed for them? A. Not for those items separately, no, sir. I have the stations.

1068 The Court: I think I will suggest that we suspend now until this witness gets those figures. He will have them here tomorrow.

Here is what is running in my mind. Of course, you disagree on the proper measure of damages here, and Mr. LaMotte is taking proper objections and exceptions to the admissibility of this evidence. However, I am going to receive it. Now is it not possible that by getting together you might look over these figures, you might find that their estimate is not much beyond yours, you might be able to agree upon some figure here that you could put in as a round figure of the reproduction value of

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this structure less depreciation. It would save a great deal of time; they might be ready to meet you more than half-way on that.

Mr. LaMotte: Well, I am perfectly willing for my witness to take that estimate. I cannot do it myself.

The Court: No, but turn it over to your witness now, and let them see it.

Mr. LaMotte: Our total figures are about $50,000 apart, that is all.

Mr. Nichols: Let us find out just where the difference is.

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The Court: Yes, find out where the difference is. You may be able to agree on it, right here.

Mr. LaMotte: Your Honor understands that we cannot agree on account of this assessment. What we can do is, we can point out and come as near as possible.

The Court: Yes.

Mr. LaMotte: If we both can agree upon the same figure we can submit it as my case, and he can submit it as his. As to any stipulation agreement, we cannot make it.

The Court: No, you need not have it in the form of a stipulation; but the practical result would be the same. There will be only certain items in dispute, it will save all that time.

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Mr. LaMotte: Mr. Breckenridge will take this—

Mr. Nichols: Have you your estimate, so that I can have it as a basis of comparison?

Mr. LaMotte: We have not got it in this shape. This is all maps.

Mr. Nichols: No, it is not all maps. We have a great deal more detail, though.

Mr. LaMotte: This includes the readjustment, too, does it not?

Mr. Nichols: Yes, it includes the whole thing.

1072 Mr. LaMotte: We have not got that at all.

The Court: There is no objection to giving them that, is there?

Mr. Nichols: No, not at all, your Honor. I am surprised to find we are so far apart, because we have tried to make things conservative. I think the whole structure shows we have tried to allow pretty generously for depreciation. We want to get it right.

The Court: It may not be so much depreciation as it is in the original figure.

1073 Mr. LaMotte: Of course, depreciation is a matter of judgment, but as to the quantities we ought to be able to agree on that.

Mr. Nichols: Shall we report to your Honor as soon as we have an opportunity to go through this thing? It will take some little detail, I suppose.

The Court: See what you can do with it in the morning. We will assemble here tomorrow, and let us see what you have accomplished.

Mr. Nichols: Well, you see, I have not got their figures.

The Court: I will give you as much opportunity
1074 as you wish to compare this, but I want to go on with this proceeding tomorrow in some form. Can you go on with some other phase of it? I want to proceed with the trial tomorrow.

Mr. LaMotte: Well, have you any other witness, Mr. Nichols, that you can put on?

Mr. Nichols: No, I was going on with Mr. Burpee to prove the values here. When we met on September 27th, your Honor, the understanding was that we should go on and prove the value of the tangible structure, something we were ready to do. On the question of the expert testimony, both the City and ourselves are under embarrass-

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ment, because my expert was abroad and did not return until towards the middle of October, and since then I have got additional experts and got them together, working as fast as I can; but it is a very complicated thing, as the City knows. The City has stated that they are not even in a position to get that ready. I have made some progress on my part.

Mr. LaMotte: I think this; you are going to prove the cost of readjustment, and your witness can bring his detail here; you can put that in here, the Court will take it over my objection, and I 1076
can cross examine on that, and then we can clean up that end of the structure. Maybe by that time we can take another short adjournment to settle on these figures.

Mr. Nichols: I want to say that Mr. Burpee's assistant, who has had charge of the detail, has been up there on the field making measurements and so forth, is ill with bronchitis and has been unable to work with him. That is rather an embarrassment to us. I am sorry to have to state that.

The Court: Well, you can get the computations, 1077
can you not, the figures?

Mr. Purpee: Yes, we have the computations.

The Court: That may be sufficient for cross examination. I do not know how much will be required. We will adjourn until ten o'clock, tomorrow morning.

(Adjourned to Wednesday, November 14th, 1923, at 10:00 o'clock A. M.)

1078 *Claimants' Witness—George W. Burpee—Cross.*

Wednesday, November 14th, 1923.

TRIAL RESUMED.

APPEARANCES: Parties same as before.

GEORGE W. BURPEE, resumed the stand and cross examination continued:

Cross examination by Mr. LaMotte:

Q. Have you your detail with you today? A. Yes; I have such detail as I could produce.

1079 Q. I am going to refer to the steel, which is one of the items where there is a big discrepancy. How many tons of steel have you figured? A. 643 tons.

Q. And how many tons of spread columns—or did you include the base castings in that amount? A. No, sir; they are not included.

Q. How many tons did you figure for the spread top columns? A. For the spread top columns and the straight columns, they average 3,400 lbs. each. In making our final calculation we took the average weight of the columns at 3,400 lbs.

1080 Q. For the spread columns, and what other columns? A. The straight columns.

Q. Are they also called square top columns? A. Yes, sir; we have included those together.

Q. And how many tons in both? A. The average would be 1.7 tons each.

Q. How much is the total amount that you said for the spread top columns and the square top columns, in tonnage? A. 153,000 lbs. for the columns.

Q. What was your method of calculating; how did you get at that amount? A. By an observa-

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tion of the plans in the Engineering Department of the Interborough, and the calculation of a typical bent.

Q. What was your method; what were your dimensions, and how did you determine that number of tons?

The Court: Let me interrupt a moment. How long did it take to measure this structure?

Mr. LaMotte: It took over a month measuring and making the calculations.

A. The columns are composed of two 15 inch channels turned in, 4¼ inch flanges, weighing 180 lbs. per yard, or an average of 55 lbs. per foot. The lacing—that is, the straight pieces by means of which the channel irons are tied together—are 3½ inches by ⅝ths of an inch, or a weight of 9.3 lbs. per foot of pounds. The mean length of the column is 19 feet. In addition the caps at the tops of the columns have a weight of 850 lbs. on the spread columns, and the casting of the square top columns has a weight of 500 lbs.

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Q. Now, have you given all? A. That is as much as I can give from the detail that I have here. I have to apologize because my assistant who works up all of these details for me is ill at home and has been absent since Monday.

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Q. Then your assistant, as I understand it, made the actual calculations? A. Yes, sir.

Q. And he made them from plans which were given to you by the Interborough? A. He did. Yes.

Q. You are unable to state whether they represent the correct measurements in weight of the actual columns in existence in 42nd Street? A. I am.

1084 *Claimants' Witness—George W. Burpee—Cross.*

By the Court:

Q. Suppose, Mr. Burpee, that the columns put in there were not those called for by the plans and specifications. You would not be able to determine that, would you, without an inspection? A. I am obliged to say that I would have to rely upon the accuracy of the statements made to me by my assistant.

By Mr. LaMotte:

Q. Now, is that all that you can tell us about
1085 the spread columns and the square top columns? A. I think so.

Q. You have told me everything that you can in the way of getting at the tonnage, have you? A. Yes, for the time being.

Q. How many tons are there in the longitudinal girders? A. In the longitudinal girders there are 772,200 lbs.

Q. And what are the transverse girders? A. 198,000 lbs.

Q. Is there any other steel in that structure besides the spread columns and the square top col-
1086 umns and the longitudinal girders and the transverse girders? A. Yes, sir; there is steel supporting the station platforms. I am not mentioning now a certain amount of structural steel in the foundations, nor the structural steel frame of the station building itself; but there is structural steel to support the station platforms. We have estimated on a square foot basis of 24 lbs. per square foot. That figure was determined in 1921 by an examination and calculation of several stations in detail on the various lines.

Q. The price that you apply to all this steel is how much? A. $120 a ton for the structural steel.

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Q. And that was based on the average bids of a contract for a certain section of a railroad out in Flushing? A. That is correct.

Q. What section was that? A. Section No. 1 of Route No. 52.

Q. Do you know when those bids were put in; what time of the year they were put in, in what year? A. My recollection is that the bids for the structural steel were put in, in May, 1923.

Q. If you were informed that for Section 2, in November of this year, the highest bid was $103.90 and the bid at which the contract was let was

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$99.80, would not that change your figure as to the amount that you charge per ton? A. Yes, it would,—assuming that the specifications were the same.

Q. Do you know what the specifications were for Section No. 2? A. I know the specifications included the steel delivered, erected, riveted, and the painting. The particular item of painting to which I have reference—the figure you have just quoted, the high bid of $103 per ton, I don't know whether that includes the painting or not. If it is on exactly the same basis as to that, I should certainly

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take that into consideration.

Q. What difference would the painting make? A. Approximately $4.00 a ton.

Q. So that you figure, at the price that this contract was let, $99, and it did not include painting, and you add $4.00, and that would make it $103? A. Yes, sir.

Q. And you have allowed $120? A. Yes, sir.

Q. Now, will you turn to the station. There seems to be a big difference there?

The Court: When you are referring to the sta-

1090 tion, you mean the station at the Park Avenue end?

Mr. LaMotte: Yes, sir.

A. The station at the Park Avenue end, the building itself $7,371; that would be the cost to reproduce it new. The canopies or awnings over the platform, $4,906. The ornamental iron railings around the station, $2,536. The belt railing on the platform, $90. The stairways, including the canopies, $3,432.

Q. What does that total? A. $18,355, which is
1091 the cost to reproduce new. The present value, $12,834—70% of the cost to reproduce new.

Q. That includes the steel structure, the flooring, and everything? A. That does not include the steel under the platform floor.

Q. How much is that? A. That is the steel which I quoted at 24 lbs. per square foot. The total station steel, at both stations, is 163,000 lbs.

Q. How much have you allowed for the portion of the station that is taken at the Third Avenue end? A. To detail that in the same way: The platform, $1,247; the canopies and awnings over
1092 the platform $3,780; the pipe railing, $80; the wind shields, $1,942. You do not want the trackmen's house or the circuit breaker house included in that, do you?

Q. No; you have given me that? A. That is a total of $7,049, the cost to reproduce new. The present value, $4,684. The present value is 70% of the cost to reproduce new of all the items excepting the platform, and the cost of the platform is 50 per cent. of the cost to reproduce new.

Q. What does that make as a total for the two stations? A. $25,284, cost to reproduce new.

Q. Does that include the Alarm Building? A.

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That does not include the Alarm Building; no, sir.

Q. And the platform? A. It does not include the platform at the Alarm Building.

Q. What have you allowed for those two items? A. For the Alarm Building itself, the cost to reproduce new, $4,446, and the present value $3,112. For the platform, $2,888, and cost to reproduce new $1,444.

Q. And those added to the totals you have already given make how much? A. $32,718, cost to reproduce new.

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Q. You have not included in there the Trackmen's House? A. No, sir.

Q. Nor the house on the platform? A. We have not made any separate allowance for the house on the platform nor the switchman's apparatus.

Q. It says here "C. B. house on platform"? A. That is the circuit breaker house.

Q. What have you allowed for the trackmen's house? A. $2,574 for the trackmen's house; to reproduce new. The present value, less depreciation, $1,802.

The Court: What page are you referring to there?

1095

Mr. LaMotte: Page 16.

Q. Now you have given us everything in connection with those buildings excepting the flooring? A. The floors are included. The structural steel supports under the station are included in the structural steel.

Q. What is in that alarm building? A. Apparatus by which blockades on any part of the line are reported.

Q. You included the apparatus? A. Yes, sir; that is included in this figure.

1096 Q. How much have you allowed for that as separate from the building? A. We have not attempted to detail the equipment in the alarm building.

Q. Where is that building; is that located in the part that is taken in this proceeding? A. Yes.

Q. Are you sure of that? A. Yes, sir.

Q. Has it anything to do with the operation of the switch? A. It has something to do with the operation of the switch. As well as the other part of the system.

1097 Q. I mean the spur? A. It has to do with the operation of the spur because it has to do with the operation of the entire system; but it is on the structure within the condemnation area and has to be replaced.

Q. You do not mean that it is a signal service in the ticket agent's booth, do you? A. No, sir.

Q. See if you can give me the figures in these subdivisions: Can you tell me what the total amount is that you have allowed for foundations under the columns and everything shown under the ground? A. $26,250.

1098 Q. Can you give me the total structural steel that you have allowed? A. $77,160.

Q. Can you give me the cost of the column bases? A. $14,490.

Q. Can you give me the cost of the painting? A. The painting is included with the structural steel.

Q. The drip pans? A. $1,454.

Q. The track rails and joints? A. I can give you the rails.

Q. Track rails, joints, ties, guard timbers—all in one? A. Including the turnouts, the total track

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work and special work, $18,210, the cost to reproduce new.

Q. You have already given me the station building, the comfort building, the locker, the switch cabin and the circuit breaker house? A. I have not given you anything for the switch.

Q. Let us see if you can give me these separately. Give me the electrical distribution, third rail, etc.? A. $6,543.

Q. The station? A. That was for the third rail and electric line equipment. That does not include the feeders in the structure for the Queensboro subway. That is shown as a separate figure.

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Q. Now, give me the station building? A. The total amount of the station buildings, both the alarm building, the trackmen's house and the circuit breaker house, $36,072.

By the Court:

Q. That is the cost to reproduce? A. Yes, sir.

By Mr. LaMotte:

Q. Now, the comfort building? A. That is not included, because that is outside of the condemnation area.

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Q. The locker room? A. That was included in the figure of $36,072, but $2,574 for the switch cabin itself included separately.

Q. What item have you included that in? A. I have not included it at all except as a part of the platform.

Q. The circuit breaker house? A. That was included in the $36,072, but of that amount it is $780.

Q. What other items have you allowed, such as engineering fees, interest during construction, ad-

1102 ministration, etc.? A. May I correct a statement that I made a few minutes ago?

Q. Yes. A. I said that the alarm building included the apparatus. That statement was incorrect, because the apparatus is shown on page 16 of this report, under "Telephone, lighting and alarm system." Total telephone and alarm system was in addition to the figures given for the alarm building above $2,196. That includes something more than the apparatus in the alarm building, but the greater part of that is apparatus in the

1103 alarm building.

Q. What else does it include? A. It includes all the telephones that are in use on the spur and the telephone lines on the spur.

Q. How much have you allowed for those? A. For the telephone we have allowed $408.

By the Court:

Q. Desk telephones? A. Yes, sir; desk telephones.

By Mr. LaMotte:

1104 Q. The cable for the alarm system? A. The cable for the alarm system and the telephone is lumped together, the total is $900, and the total for twisted wire is $120. The greater part of that would be chargeable to the alarm building.

Q. Are there any other items in that stucture besides those that I have asked you about in the last enumeration? A. You did not ask me specifically about the pipe railings or the outside walk-ways and the plank deck on the structure.

Q. What have you allowed for those? A. For the pipe railings, on page 15, $4,100, the cost to reproduce new. For the walkways, $2,972; for the plank decking, $499, the cost to reproduce new.

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On page 16, the interlocking and signal apparatus, the cost to reproduce new $4,795. The other item not mentioned so far is D. C. feeders to the Queensboro Subway, which are carried on the structure, $6,276 to reproduce new. That covers the detail; that is everything specifically enumerated, and takes us up to the item of "Omissions and Contingencies."

Q. What do you mean by omissions and contingencies? A. That is an arbitrary allowance of five per cent., to cover such small omissions as there might be from the inventory, which in this

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case would be relatively light, and it covers other items of cost not specifically provided elsewhere, such as maintaining the 42nd Street and Lexington Avenue trolley car tracks in operation and in maintaining street surface traffic during excavating.

Q. Well, what does it amount to in money? A. In money it amounts to $10,137.

Q. What else have you added; what overhead charges? A. In addition to the physical cost in the detail enumerated we have allowed for "Preliminary and Organization Expenses"—that is, all

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expenses that would be incurred in connection with applying for a certificate of public convenience and necessity, the engineering services that would be necessary to prepare an estimate of the structure, and attendance at hearings, with all incidental legal expenses, $5,000.

Q. You have an item of five per cent. for contingencies, amounting to $10,137; for general exponses, $19,000, and an interest item of $5,440? A. Yes, sir.

Q. And cost of financing $9,887. Making a total of $44,464. Now, that is 21.9 per cent. of the cost of the structure, is it not? A. Yes, sir.

Q. All of your estimates are based upon the plans which have been furnished to you by the Interborough? A. Yes, sir.

Q. As to stations and as to the tracks—everything? A. Yes, sir.

Q. Are you able to separate your estimate of the stairway at the Park Avenue end? A. Yes; I can separate the stairway from the remaining part of the station.

Q. How much have you allowed for that alone? A. For the stairway $3,432, cost to reproduce new.

1109 That is the only stairway that we have included—the Park Avenue station stairway.

Q. Are these cables that you have allowed for of standard size? A. They are two million circular mills capacity. I would not say that there is any standard size. That is the common size for a large feeder.

Q. Do you know whether the company keeps them in stock for their general work? A. No, I do not.

Q. Do your figures include the new conduits to be built under the street? A. No, sir; none of the figures that I have recited here.

1110 Q. You do not know how long it would take to put this conduit under the street, do you? A. I have not made any calculation of that.

Redirect examination by Mr. Nichols:

Q. The figures for the steel in Route No. 52, Section 1, include the cost of erection under the circumstances that there existed? A. Under the circumstances existing at Section 1 of Route 52, yes.

Q. And what relation, to the total cost as indicated by the bid has the cost of erection under various circumstances? A. The cost of erection at

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42nd Street and the condition existing there would be very much greater than the cost of erection in Route No. 52, Section 1. We have made an allowance for that in determining our price of $120 a ton.

Q. Route 52, Section 1, runs out from Corona through a sparsely settled territory across the meadows to Flushing, does it not? A. Yes, sir.

Q. On that route in Roosevelt Avenue is there any traffic that is at all comparable to the traffic in 42nd Street in New York City? A. No, sir.

Q. Have you been over that route? A. No, sir; I have not been over it personally, but I have had an observation of it made.

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Q. You have been over the testimony before the Transit Commission which resulted in the approval of the taking down of this spur on account of street congestion? A. Yes, sir.

Q. Is there a street surface railroad in that street? A. Yes, sir; a double track line.

Q. And the opinion of the Transit Commission is based upon the congestion which was shown to exist by the Police Department and others along the line of the spur, is it not? A. That was my understanding, yes.

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Q. Is the cost of construction of steel work conditioned upon the crowding and congesting of the street which affects the possibility of the storage of cables and the danger of liability to accident in erecting a superstructure in a heavily crowded street? A. It is very much so.

Q. How about the delays that are due to the necessity of conditioning the work upon the traffic in the street? A. Those delays increase all of the labor costs incident to construction of this type.

Q. Is there any difference in the type of the steel

1114 as between the Long Island Construction, Route No. 52, and the kind of girders that there are in 42nd Street? A. There is a difference, yes. The type of construction on Route No. 52, Section 1, is a plate girder which is somewhat cheaper of fabrication than the lattice type in the 42nd Street spur, and although we have used the steel type here, the 42nd Street spur is wrought iron, as a matter of fact.

By the Court:

1115 Q. Is that more expensive than steel? A. Yes, sir.

By Mr. Nichols:

Q. Is a plate girder a solid girder? A. Yes, sir.

Q. That is the kind that the City has used in recent construction? A. That is the general type of the new elevated railroad construction.

Q. But the lattice girder is an open girder? A. Yes, comparatively speaking.

Q. And does not obstruct the light so much in the street? A. Not to the extent that the solid plate

1116 girder does.

Q. So you have in mind the reproduction of a structure which has the advantage from the point of view of minimum obstruction of light such as exists there now? A. Exactly; yes.

Q. Having in mind the conditions that you have stated as to the comparatively great cost of construction under the conditions that exist in 42nd Street, have you based your estimate upon the bids made for the construction of Route 52 over in Long Island? A. Yes, sir.

Q. And you considered that those bids make a fair foundation for the determination of the cost

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of reproduction in 42nd Street, making proper allowance? A. I consider that they do. They are the best available evidence that we have as to what the price should be after a proper allowance is made for the additionally congested conditions.

Q. And you have accepted them as the best method of determination, have you? A. Yes, sir.

Q. Do the bids which are accepted by the rapid transit construction always result in the construction of the work at the bid cost, or, rather, conditioned such as where there is a failure of contractors, which have occurred in construction work, which must be allowed for in determining what is likely to be or may be the real cost; is a bid absolutely conclusive? A. No, sir; the bid is not conclusive as to the total cost. It is customary to allow an item for contingencies of at least five per cent.—and ordinarily ten per cent.

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Q. Are you familiar with the history of the construction of the rapid transit railways in New York City in recent years? A. Yes, sir; in a general way. I have at times been familiar in detail with the cost of the elevated extensions, and what is known as the M. E. I. work, the so-called third tracking.

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Q. And extensions built under the dual contract franchise granted in March, 1913? A. Yes, sir.

Q. And did that involve considerable work in the downtown streets of the city here? A. Yes, sir.

Q. And are you familiar with the conditions and the costs involved by working under those conditions? A. Yes, sir. I have not a record of those costs with me, but I am familiar with them.

Q. You have studied them, in arriving at what the cost would be here in 42nd Street, have you not? A. Yes, sir.

1120 Q. In determining the overhead, to which reference has been made on your cross examination, did you have regard to the report of the American Society of Civil Engineers in respect to estimating the cost of public utilties and railways? A. In the item of the inclusion of five per cent. for omissions and contingencies I had in mind the fact that a committee appointed by the American Society of Civil Engineers to investigate the question of the valuation of public utilities had recommended very strongly in favor of such an inclu-
1121 sion. I also had in mind that so eminent an authority as Proof George F. Swain, the head of the civil engineering school of Harvard University, and now the consulting engineer to the Committee on Transportation Facilities of the Board of Estimate and Apportionment, has recommended the inclusion of an item of approximately five per cent. for omissions and contingencies in valuation work and has used an item varying from two per cent. to six per cent. on valuations which he has made—not for corporations but for governmental bodies either State or Federal.

1122 Q. What was the percentage recommended as proper by the American Society of Civil Engineers? A. They did not specify any percentage. They specified the necessity for the inclusion of this item.

Q. You are following the percentages that are actually employed in contract work, are you? A. No; approximately one-half. It is customary to allow ten per cent. for contingencies, and I have allowed one-half of that amount because part of that ten per cent. only is to cover the unforeseen contingencies as to the cost of work performed and

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roughly another half is to cover additional work that may be ordered.

Q. After the original contract was let, you mean? A. Yes.

Q. Now, will you explain the item "Preliminary and Organization Expenses" which was referred to in your cross examination? A. The preliminary and organization expenses are the expenses which would be necessary for any corporation who was to undertake the construction of the 42nd Street spur if that spur did not already exist. It would be necessary before such a spur could be con-

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structed to obtain a certificate of the Public Convenience and Necessity of it from the Transit Commission, and in order to obtain such a certificate it would be essential to prove the cost of such a spur as well as the convenience which it would afford to the public. That could not be done without the expenditure of a certain amount of money. We have allowed $5,000, which I believe is the absolute minimum; in fact, I believe that if this spur did not exist today and the Manhattan Company were to undertake to get a certificate from the Transit Commission to construct that spur, leaving aside entirely the question of easements

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and thinking only of the physical structure, it could not be done for $5,000.

Q. You mean that all the preliminary expenses—the plans, the legal expenses, the promotion work, and everything that has to precede the launching of an enterprise of this character, that you have only allowed $5,000? A. Everything up to the time of the commencement of construction. By that I mean the preparation of the detail plans. This $5,000 would not cover the preparation of the detail plans. It would cover the preparation of the

1126 general plans, which would be sufficient to prepare an estimate.

Q. And to show the franchise granting authority the real character and sufficiency of the work? A. Yes, sir.

Q. In these overhead expenses do you base your estimate upon what a reasonably prudent business man would have considered as necessary in engaging in an enterprise of constructing and obtaining a franchise for a railroad of this character? A. Yes, sir; with this exception, that if I were

1127 preparing an estimate in advance of any construction of the 42nd Street spur, I should increase the item of preliminary organization expenses, because I believe that the figure that I have used would actually be so low as to possibly mislead any client into venturing into a situation with the understanding that obtaining his francise would cost him only $5,000, when we can easily imagine that it would cost under the conditions obtaining in 42nd Street today a great deal more.

Q. You have not had in mind the cost of the expenses incident to the proceedings to tear it down, have you? A. No, sir.

1128 Q. Now, coming to the administration during construction. Will you explain that item, to which reference was also made in your cross examination? A. We have allowed $2,000 for administrative expenses during construction. That is to cover the expenditures by the owner of the property after the obtaining of a certificate of the convenience and necessity for it, for his general organization—not his engineering organization, which is elsewhere provided for; and it would cover such time as the president or the general corporate officers of the company, particularly the treasurer and the

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accounting department, would give to handling the construction of this spur.

Q. The general question of dealing with the City authorities? A. Yes, sir; during construction.

Q. And for that you have allowed one per cent.? A. One per cent.—$2,000, which also is a very conservative estimate because you would hardly have enough to pay for two clerks for nine months.

Q. Engineering and Superintendence. Will you explain that item? A. That is $10,000—five per cent. appproximately of the physical cost of the property, or the structural cost of the property.

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It includes the preparation of the detail plans—not the preliminary engineering; the location of the columns in the street, with the necessary test pits that would have to be dug to determine the nature of the sub-surface structure; the purchase of materials; the carrying on of the construction from start to finish, and the final awarding of the certificate to the contractor that the work was completed.

Q. Does that have to do with the encountering of the difficulties that exist there in 42nd Street, where the subway structure is underneath the street, and where there are various water pipes,

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and conduits, vaults, etc.? A. That would increase the cost because it would make the necessary investigation in connection with the terminus, and the location of the columns, more arduous, and it would require more time.

Q. Under the street there in 42nd Street, there are a great multitude of pipes and conduits, sewers, etc., are there not? A. Yes, sir.

Q. And that would have to be carefully considered in 42nd Street? A. Yes, sir. 42nd Street has its full share of sub-surface structures, and the nature of them is evidenced by the depth to which

1132 it has been necessary to carry some of the present foundations.

Q. How much is that? A. 28 feet.

Q. That is the foundation of the 42nd Street spur? A. Yes, sir.

By the Court:

Q. The purpose of that was to get down below the sub-surface structures? A. Yes, sir. Those columns were relocated in connection with the loop into the Grand Central Station.

1133 *By Mr. Nichols*:

Q. What did you allow for legal services after the franchise had been obtained, and legal services through the construction and completion of the work? A. We allowed one per cent., or $2,000, which, as I remarked before, I would consider the absolute minimum.

Q. For how much of a period did you estimate capital would be locked up? A. From start to finish we estimated that period would be nine months.

1134 Q. This would only be operated as part of a larger system and the whole thing would wait until the system, or enough of it was completed to warrant operation? A. Yes, sir; that is correct. It is certainly correct as a matter of history. This spur was built as part of the line that originally extended from Chatham Square to the Grand Central Depot. And, taking that view, the period of construction would be at least a year and a half, and half of that period would be nine months.

Q. Why did you use half of the period? Was it because you assumed that half of the money would be used up because half of the work only would

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be done? A. That is on the assumption that the expenditure is relatively uniform from the commencement to the end of the work. That is not the rule of the Interstate Commerce Commission, though. Their rule is to take half the period plus three months. Now, here we have taken half the period because if we had taken half the period plus three months we would have charged interest over a period of seven and a half months, which appeared to us rather liberal to the railroad company.

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Q. Do you know any basis for any estimate so low as that which you have made? A. This basis, that the spur would be built, assuming that the Third Avenue line is already in existence and the spur is not, and the company owning and operating the Third Avenue line might conceivably build the spur as a feeder to the Third Avenue line; and on that basis the expenditure of money would probably be restricted to nine months, and half of that period is four and a half months, the period on which we have charged interest on the full expenditure at the full rate.

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Q. You have taken the minimum possible time? A. What we considered the minimum, yes.

Q. Now will you explain the item of "Cost of Financing"? A. The cost of financing includes the service charge only for the distribution of the securities. It is the price that the railroad company will be obliged to pay any bankers for the floating of the securities. It is not in any sense a discount; we have allowed no discount. We have allowed four points, or four per cent. That four per cent., of course, taken on the total cost of the work, that four per cent. on the total cost, which is the amount of money that would have to be raised, is, $9,887.

1138 *Claimants' Witness—George W. Burpee—Redirect.*

Q. That is the practical matter of financing an enterprise of this character, is it? A. Yes, sir.

By the Court:

Q. On what basis is that charge made? How does it work out as a practical matter? A. Any corporation in raising money for a new enterprise is obliged to pay to the banker a certain number of points on the issue of the securities. If the securities are issued to the public at 100, the railroad company will get 97. Now, those three points are
1139 not a discount. That is a charge that the corporation pays to the broker for the use of the cash. If the bonds were sold at 97 and the railroad company got 94 for them there would be a brokerage charge of three points, and a further discount of three points. We are assuming no discount.

By Mr. Nichols:

Q. You are assuming that money for railway purposes can be borrowed at par without discount? A. I am not exactly assuming that, but I assume that if it was part of a discount the discount would be reflected rather in the interest during construc-
1140 tion than in the brokerage charge.

Q. The four points covers the whole thing? A. That is simply for the services in obtaining the money.

Q. The railroads have had to pay rather large for such services, have they not? A. Yes, sir. The charge varies. In some cases it is as low as 2½ points, and in some cases it is in excess of 5 points. We have taken 4 points as the average for a facility of this kind.

Q. In these estimates that you have made no inclusion of costs that arise out of the easements, or of other matters unconnected with construction

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or included, or the franchise obtaining work, to which you have referred? A. No, sir; we have made no allowance for any charge of that kind.

Q. That is the pure cost of reproduction? A. Yes, sir. It relates to the physical construction only.

Q. In the physical construction you have given various percentages of allowance for the actual value of the work as contrasted with the cost of reproduction due to the length of time that the rails, for instance, have been down. How did you figure the so-called depreciation on the rails? A. We ascertained in the case of the rails the average

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life of the rails on the spur. We found to our satisfaction that the rails had existed and had exhausted their useful life and that therefore they were reduced to scrap value. Not a re-laying value, but a scrap value.

Q. And in regard to the wood work on the structure, speaking generally? A. We have in general attempted to apply depreciation on this theory: That the amount of depreciation represents the physical deterioration from a new condition—not a first class operating condition, so-called, but an absolutely new condition. We have determined in

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the case of the ties the average age of the ties, and in addition observed their condition as far as we could determine the condition of a tie by observation, and on the basis of an assumed life on the spur of eighteen years we allowed a depreciation of seventy-five per cent. That is, we include the ties and the grade timbers at twenty-five per cent. of their new cost.

By the Court:

Q. I notice that under the item of "Elevated Structure" you apparently have allowed nothing

1144 for depreciation. That was your intention, was it? A. On the structural steel we have allowed eight per cent. on depreciation. The elevated structure—if I may draw your attention to a typographical error on page 15. That is a general heading, that everything that follows, the foundation, 100%. There is no depreciation there.

Q. Then that relates simply to foundation? A. Yes, sir.

By Mr. Nichols:

1145 Q. You have figured the foundations on the basis of the cheapest way in which they could now be produced—that is, concrete as against brick or rubble stone? A. Yes, sir.

Q. To that extent you have made an allowance that is material only to the foundation? A. Yes, sir; exactly as we have with the steel. We have tried to estimate what it would cost to reproduce a practicable structure.

By the Court:

Q. In other words, your idea is that those foundations will last for time immemorial? A. Yes;
1146 at least it is impossible to predict their life.

By Mr. Nichols:

Q. The wrought iron columns are the same that were there when the elevated railroad was built throughout the city? A. Yes, sir. There has been a certain amount of strengthening of them from time to time. We did allow a certain amount of depreciation on the structure. For instance, it needs a coat of paint, and it needs certain reinforcement. We figured the cost of the coat of paint and the cost of reinforcement, in a manner

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similar to the work that was done on the Second Avenue Line and on a part of the Third Avenue Line. We made a similar allowance, or, at least, we assumed that might have to be done, on this spur; but otherwise the steel structure would last absolutely indefinitely.

Q. In regard to the matters not shown on the plans, did you make a personal observation to determine deterioration on values? A. Yes, sir.

Q. And the points upon which you based the valuation of the steel were the construction claims by which the spur was constructed—that is, assuming that you were correctly informed by the company which gave the plans to you? A. We were given the plans not only of the structure as originally constructed, but also were told of a lot of steel that had been added to it from time to time.

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Q. I mean a plan that relates to the construction, whenever that was? A. Yes, sir; that is true.

Q. Apart from that the deterioration was determined by a physical observation? A. Yes, sir. In fact, all deterioration was partially determined by an inspection.

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Q. And you used the plans where they were available to determine quantities? A. Quantities involved in the foundations and in the structure, and also the records in the Chief Engineer's office in regard to the rails and the ties, etc., to determine the average life of the track.

Q. The construction plans are available to the Transit Commission; are they not? A. They have had them. I do not know whether they have them now or not.

Q. They have all been in the possession of the

1150 Transit Commission? A. Yes, sir; to the best of my knowledge they were while they were making their valuations.

Q. They had access to everything in the office, exactly as you did? A. Yes, sir.

Recross examination by Mr. LaMotte:

Q. In fixing the price of the steel at $120 a ton, did you take into consideration the possibility or the likelihood of a contractor not carrying out his contract and that the builder would be put to ad-
1151 ditional expense by reason of that? A. Not in that specific price, no. Any contingency like that is taken care of in the item specifically allowed for contingencies.

Q. I mean in your item of Omissions and Contingencies? A. Yes, sir.

Q. So when you determined your price of $120 a ton that did not enter into it at all? A. That was the price at which it was assumed a contractor would take the work for.

Q. As I understood you to say, you never have built an elevated railroad? A. No, sir. I have
1152 built bridges and wooden trestles.

Q. What have you built in New York City? A. I have reconstructed foundations. I reconstructed the foundation under the Times Building in Park Square; reconstructed the foundation under the Havemeyer Building, 26 Cortlandt Street; and I have had something to do—at least while I was managing engineer of Westinghouse-Church-Kerr & Company—with the construction of the Chicago pneumatic tool company's building on 44th Street, and a garage at Lenox Avenue and 110th Street.

Q. You never did any actual construction work

in the line of any public street in New York City? A. Except those that I have just stated.

Q. Therefore, in determining the overhead charges and the various expenses involved in the construction of work like this you were guided in a great degree by percentages which were thought proper by the American Society of Civil Engineers, such men as Prof. George F. Swain? A. I was guided in the use of that percentage by what is regarded as sound engineering practice. That item has been allowed in at least one instance by the Public Service Commission here, and in numerous 1154
cases by other State commissions.

Q. It is not based upon any actual experience that you have yourself had in construction work in New York City streets? A. No, sir; not in New York City streets.

Q. Did you, in this item of $120 per ton, take into consideration in arriving at that figure the difference in the cost of the erection of steel in 42nd Street as compared with the cost of erecting steel over in Long Island in Roosevelt Avenue? A. Yes, sir.

Q. Is that the item that causes the difference be- 1155
tween the cost in Roosevelt Avenue and the cost in 42nd Street? A. It is one of the items.

Q. Were you furnished by anybody in the Interborough Company's office any items like general expenses, including attorneys' fees, interest, and cost of financing? A. No, sir.

Q. Those figures were not determined for you by anybody in the Interborough Company's office? A. No, sir. None of the quantities were determined for me by the Interborough people.

1156 *Claimants' Witness—George W. Burpee—Redirect.*

Further redirect examination by Mr. Nichols:

Q. Did the Interborough people give you any figures, or make any suggestion to you, or intimate to you what was expected of you in the way of valuations? A. No, sir.

Q. These are your own independent valuations? A. Yes, sir.

Q. Have you ever been employed by the Interborough Company before? A. No, sir; only by the Manhattan Company.

1157 Q. In reference to this work that you did in respect to the reorganization, do you know that the Interborough Company was subjected to an application for a receivership, it had defaulted on its payments under the Manhattan lease, and that it had to give up its claim to seven per cent. dividend payments under the lease and take three, four and five respectively? A. Yes, sir; I learned that through my investigation.

Q. And that those dividends have not been earned since then—that is, they have not been paid?

Mr. LaMotte: I object to this question.

1158 The Court: What is the purpose of it?

Mr. Nichols: My purpose is to show that the Manhattan Company and the Interborough Company have decidedly separate interests in this matter. It was stated by counsel for the property owners yesterday, Mr. Page, that they were so interlocked that what one would lose the other would gain, and that it did not make any difference. As a matter of fact, their relations were on the point of severance within the last two years.

The Court: I think you have covered that point sufficiently.

1159

Q. Is this spur in 42nd Street a suitable structure for the purposes of railroad operation in the City of New York?

Mr. LaMotte: I object to that question on the ground that this witness is not shown competent to testify about that. He is not shown to be a practical railroad man.

Q. What has been your experience in the study of elevated railroad structures, their operation and suitability? A. My study has been confined to New York City in the case of the Manhattan Railway Company.

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Q. Have you carefully studied the workings of the elevated railroad system from the financial point of view? A. I have.

Q. And do you know whether or not they have been profitable?

Mr. LaMotte: I object to that question.

The Court: I will permit the witness to answer that.

Mr. LaMotte: I except.

A. Yes, sir; I do know.

Q. Is this spur in 42nd Street a suitable structure for the operation of the elevated railroad in this locality? A. Yes, sir; it is.

1161

HAROLD L. COE, called as a witness by the Claimants, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. Where is your place of business? A. 621 Broadway, New York.

Q. And what is your business? A. Photographer.

Q. How long have you been engaged in that business? A. Over 25 years.

Q. Have you taken photographs of the elevated structure in 42nd Street? A. I have.

Q. I show you some photographs contained in this folder. Will you state the circumstances under which they were taken by you, and when they were taken? A. They were taken by me at different dates. You will find the date on the back of each photograph, and the description of it. I believe they were all taken on the 8th and 9th of October of this year, 1923.

Mr. Nichols: I offer them in evidence.

The Court: How many photographs are there in that folder?

1163 Mr. Nichols: Nineteen.

Mr. LaMotte: I have no objection to the photographs providing they are photographs of this location.

Mr. Nichols: They are.

(Received in evidence and marked Claimants' Exhibits H-1 to H-19.)

Q. I hand you 24 more photographs and ask you when they were taken? A. They were taken between October 25th and October 31st, 1923.

Q. Did you take them? A. Yes, sir.

1164 Q. These are photographs of the same locality on 42nd Street between Third Avenue and Park Avenue, are they? A. Yes, sir. I see they are all dated October 31, 1923.

Mr. Nichols: I offer these photographs in evidence.

Mr. LaMotte: They are offered merely to show this spur, I understand?

Mr. Nichols: To show the spur and the locality.

Mr. LaMotte: I have no objection to their being received in evidence if it is understood that they are merely to show the spur.

The Court: They have got to show some of the buildings, I suppose.

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Mr. Nichols: I am not offering them for that purpose. I am offering them to show the structure, but of course, I shall have to use them to show the relation of the structure to the surrounding buildings. However, we have not reached that point yet.

The Court: I will receive them.

(Received in evidence and marked Claimants' Exhibits H-20 to H-38 and H-42 to H-46.)

No Cross Examination.

1166

HERBERT J. FRASER, called as a witness by the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. Where do you reside? A. I reside in Orange, but my New York address is No. 50 Park Place.

Q. What is your occupation? A. I am a structural engineer, employed by the Interborough Rapid Transit Company.

Q. How long have you been with them? A. I have been with them since 1910.

1167

Q. Are you familiar with the records of the Interorbough Rapid Transit Company in respect of the structures of the elevated roads? A. Yes, sir.

Q. And the spur in 42nd Street? A. Yes, sir.

Q. Have you had charge of the plans for the construction of the 42nd Street spur? A. I have charge of the records temporarily. You know that spur was constructed many years ago. I did not have charge or custody of the plans at that time, but I have charge of them now.

Q. Can you produce them? A. Yes, sir. (Producing plans.)

1168 Q. Will you describe those plans?

Mr. LaMotte: Objected to unless it is shown that this structure was erected in accordance with those plans.

Q. Have you examined the structure and verified the plans? A. Yes, sir; I have.

Q. And do you know of your own knowledge that these plans correspond with the structure as it exists there today? A. Yes, sir; it does.

Mr. LaMotte: I would like to examine the witness about that before the plans are offered.

1169 *Cross examination by Mr. LaMotte*:

Q. When did you make that examination and comparison of the structure with the plans? A. The middle of September last.

Q. You took the plans which were on file in your office up to the structure itself, and you there checked them? A. By observation.

Q. What do you mean by observation? A. I compared the members, I examined to see the size of the angles, and whether they corresponded with the plans, and I examined as to the number of

1170 rivets to see if they were the same, in any of the members that I had any doubt about.

Q. Did you compare the size of the columns in the structure with the sizes provided for in the plans? A. I did not do that because I knew from my past experience that the original drawings corresponded to the structure in the field. You see, I was in charge of the Bowery section, where we had a great deal of this old structure of the same type, and I knew there was no variation, to speak of, in any of that kind of structure.

Q. Did you compare the foundations? A. No, sir. I did not work on that, even in the office, be-

cause another man figured on the foundations and he gave me the weights of the steel so that neither of us would overlap the other on the same job.

Q. Did you compare the station itself with the station as shown on the plans? A. Yes; sir; up to the bottom of the wooden supports.

Q. Don't you know that the station has been altered since those plans were made? A. I have taken whatever I got from the records in the office and have added to it my own sketches of what I found at the structure.

Q. And do these plans that you have here now 1172
show those modifications or changes? A. I think they do. I found by going up there and sketching the thing out personally that these drawings show practically what is there, and I have added whatever I found that was not on the plans.

Q. You know that part of that station was taken off at the Park Avenue end, do you not? A. Yes, sir. It originally extended into Park Avenue.

Q. Do the plans that you are using show the station as it was originally built, or as it is now? A. I have the drawings here showing the structure as it exists today.

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Q. I mean the plans that you have been asked about. Do they show the station as it is now, or as it was constructed originally? A. They show as it is now.

Mr. Nichols: Now I offer these plans in evidence.

By the Court:

Q. How many of them are there? A. There are seventeen of them.

Q. And you say that these plans show the struc-

1174 ture as it exists today? A. Yes, sir; as far as they go.

Mr. LaMotte: I notice that one of these plans shows the station as it was originally constructed.

Mr. Nichols: I am going to have our men go up there and measure everything over again.

The Court: I think it would be well to do that.

Mr. Nichols: Then the City can send its men along.

Mr. LaMotte: I object to these plans as immaterial, irrelevant and incompetent, and on the
1175 ground that no foundation has been laid for their introduction.

The Court: I will receive them.

Mr. LaMotte: I except.

(Received in evidence and marked Claimants' Exhibit J—all the plans being marked as one exhibit.)

Mr. LaMotte: I want to ask this witness a few more questions about these plans.

By Mr. LaMotte:

1176 Q. Will you point out to me one of these maps which have been put in evidence which shows the station at the Park Avenue end of this spur? A. This is the one (indicating).

The Court: Let me ask if counsel have considered the advisability of taking an adjournment of this trial until you hear from the Public Service Commission?

Mr. Nichols: I think we ought to do that.

The Court: Is there anything that you could go on with now?

Mr. Nichols: We could go on with testimony as

1177

to that portion which is outside of the condemnation area.

Mr. LaMotte: If you did go on, upon the theory that you stated yesterday and the Commission should decide against that theory, of course all of our work would be for nothing. I think it would be just as well to wait until after the determination has been made by the Commission.

The Court: Of course, the important question to be considered now is the saving of time, and if an adjournment would save time eventually perhaps that would be the best thing to do. I am willing to do that because then I could take up other work. Let me ask you, Mr. Nichols: Have you a tabulation of the proof that you are going to offer with respect to the easement valuations?

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Mr. Nichols: Not yet, your Honor. Our expert was taken ill and he went away; but he has returned and he was here until the middle of October; but I did not want to get anybody else without consulting him. I have other experts, and they are working on the matter now. Of course, I know pretty nearly what their testimony will probably be.

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The Court: Are you willing to tell Mr. LaMotte what that is?

Mr. Nichols: Certainly.

Mr. LaMotte: That will be helpful to me, if I know the method of proof that Mr. Nichols expects to follow, because as the matter stands now I do not know whether he is claiming damages on what these easements did cost originally, or what they would cost if acquired at the present time.

Of course, my theory of this case is that this is all immaterial in determining the value of this property for railroad purposes, and if that testi-

1180 mony is admitted why I shall be forced to meet it in rebuttal and until I know upon what theory Mr. Nichols is going to proceed I do not know what to tell my witnesses to prepare for. It seems to me utterly remote to estimate the value of an existing railroad by the benefit that its taking away is going to have upon the abutting property.

The Court: Is not the easement which the claimants have there a property right? I understand that is Mr. Nichols' claim.

Mr. Nichols: Yes, sir; that is what we claim.

1181 Mr. LaMotte: It is a property right in property acquired for railroad purposes, and I contend that it cannot be valued for any other purpose than for a railroad purpose.

The Court: You may be entirely right on that, but I want the record here in such shape as that the matter can be finally determined.

Mr. Nichols: The City has tried a great many of these cases. We settle everything, but the City tries everything. Now, I am following the City's method.

Mr. LaMotte: Where?

1182 Mr. Nichols: I will tell you, in the Viaduct case, both witnesses, your man Boylan as well as others, testified in this way: How much is that Hotel Belmont worth? So much. Now, how much is that easement for light, air and access worth? Well, they figured it was, say, five per cent. or so much, it affected the rental value of two stores which were affected there, it figured up to that amount, and that it took an area of perhaps 100 feet back. That gave definitely their method as real estate people of figuring the effect of taking those easements of light, air and access, how much on that principle they were, and they testified to it, and I

think the award was perhaps 15 or 20 per cent. of the assessed value of the property in that case. That is how that was tried. It was not very difficult, it was extremely simple, and the record is very small.

Now, it all depends upon the confidence the court has got in real estate experts and the correctness of their valuations, but there is a good deal to aid us. There is the fact of what was paid and judicial judgment for these easements, and the possibility of comparing the known value of the property at that time as determined by the assessments, with 1184
the value at the present time, and the interest of course would be in proportion.

We will present all of that, and it seems to me an exceedingly simple matter, except for the large amount of necessary details, because it is a large amount of property. There are four blocks here that are affected, and we cannot avoid taking them up; but as far as it is possible to avoid methods of proof or contentions which we can dispense with by reason of getting rid of misunderstandings by showing all we have got to the City beforehand, and discussing frankly the situation, I would sug- 1185
gest that Mr. LaMotte consult with some of the people in his own department there with whom I have tried scores of cases, because we are jointly defendants with the City in that Benjamin case to which I have alluded; the case decided by Judge Benedict. The City tried that with us. We were in entire agreement as to the method of trying it, and our views are substantiated in the result. Those gentlemen who are constantly engaged in easement cases will be able to assist Mr. LaMotte.

Mr. LaMotte: Maybe they would be very glad to try it.

1186 Mr. Nichols: I have been engaged in this sort of thing for 30 years, and it seems very simple to me.

The Court: How long do you anticipate it will require to put in your proof on easements?

Mr. Nichols: Covering so large an extent of territory, I do not know about the cross examination but I should say the whole thing would be a matter of three or four days.

Mr. LaMotte: To put in your direct?

Mr. Nichols: No, the whole thing, our side of
1187 it; and I suppose your side would be the same.

These cases used to take a great deal of time. I suppose the Shaw case, at the old Grand Central, took probably about two weeks to try, just that one property. Now, we will try the modern method on this. We have been avoiding litigation for a great many years. I will do the best I can to simplify it. One way is to get real estate experts that know their business.

Mr. LaMotte: While we are discussing this question, here is what seems to me the ridiculousness of the whole situation as to the easements. I
1188 am more convinced since I heard the testimony of the lifelong engineer of the railroad, that this spur has absolutely no value. There he expects that the Third Avenue station will not only take all those that now use the spur, but the service will be greatly increased by the removal of this obstruction in the streets. Now, surely the spur, under those conditions, could not have any value at all to the railway, none; and to imagine that this company could come in under those conditions and run the damages up to millions of dollars, upon the basis of a benefit that the removal of this spur would be to abutting property, seems

to me so far fetched and ridiculous that I cannot imagine that this testimony could possibly have any bearing upon this case at all.

Mr. Nichols: I have heard that argument not for the first time. I have not replied to it, because I did not want to waste the time of the court at this time. Nothing appears to me so outrageous as the argument that I have just heard, and I shall certainly take occasion at the proper time to reply to it fully, and I believe effectively.

The spur is of supreme value to us, and we do not intend to give it up if we can possibly help 1190
it, and if we do we simply want its actual value.

Mr. LaMotte: We are perfectly willing to give you its actual value, based upon its worth, but not what you can hold up abutting owners for.

Mr. Nichols: We are not holding up abutting owners. The abutting owners held us up when we built it, and we paid half a million dollars for half of it, and the other half we got by prescription. We holding up abutting owners, whose property is ten times more valuable than it was, due to the enterprise of those who brought it into its present situation, by making it the greatest transit originating centre in the world today, where the number of people who use it have increased 100 per 1191
cent. nearly in five years, as shown before the Transit Commission! We who have built up those conditions will have a right to present actual values, just as the owners of those properties did.

Mr. LaMotte: That is all right.

Mr. Nichols: The City itself made money by buying one of those properties, Pershing Square. In that case the easement was so enormously valuable for the subway that they took the course of

1192 buying the entire property in order to get the easement, and then they sold it.

The Court: Well, I cannot determine this question at this time, at least. It is agreeable to the court under all the circumstances to take an adjournment until such time as you gentlemen feel that you will be ready to go on here and complete this work. Do you want to do anything further with this witness, Mr. LaMotte, at this time?

Mr. LaMotte: Well, I asked him to show me the plans on which the station at Park Avenue
1193 was built, and he said they were partly on three different plans.

By Mr. LaMotte:

Q. What I wanted to know was whether the station as shown upon those plans corresponded with the station as shown upon the Damage Map, City's Exhibit No. 19? A. Yes, that is the way I figure it.

Q. I asked you whether the plans which you have found show the station exactly as it is on this Damage Map? A. No, as an engineer I should not say so.

Q. What? A. As an engineer I should not say
1194 so.

Q. You should not say so? A. No. It does not show it exactly as it is on the plans.

Q. Do those plans show the station at Third Avenue as shown upon this Damage Map? A. Yes.

Q. Do you mean to say there is no difference at all between the station as shown upon the plans before you, and the one shown upon City's Exhibit No. 19, the Damage Map? A. No.

Q. None whatever? A. No.

Q. No, but there is a difference as to the station at Park Avenue? A. Yes.

1195

Mr. LaMotte: Well, there is enough to show that those plans are certainly inadmissible. I object to them as not truly and properly representing the structure that is there today.

By the Court:

Q. Is there anything on any of those plans that have been admitted in evidence which shows the station at Park Avenue as it is today? A. Yes, sir, it shows—

Q. What have you there that shows the station as it is today, on those plans? A. I have the whole thing as it was built, and some parts of it have been removed.

1196

Q. Well, have you got anything there that shows it as it is, as the structure exists today? A. They did not make plans after that fashion at that time. They made them piecemeal, sir, and I have not the sketch—

By Mr. LaMotte:

Q. Do not those plans show the spur with tracks turning uptown as well as down? Look at the plans. A. Well, in here there are—

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Q. At Third Avenue, yes. A. Yes, at Third Avenue it shows a track turning up as well as that turning down.

Q. As a matter of fact today there is only one track there, and that turns down, does it not? A. The steel work is there; the rails are not.

Q. But the tracks?

Mr. Nichols: He just means the rails.

Q. There is no connection, no uptown connection at all? A. No.

Q. And according to those plans there was an uptown connection? A. Yes, sir.

1198 Q. So it differs in that respect? A. Yes, sir.

Mr. LaMotte: And many others, I guess.

Mr. Nichols: Well, you see, it is nowhere contended that there have not been changes made in the structure. We have the basis, the original plans. Everything is there except that track. We have made allowance for all those changes.

By Mr. LaMotte:

Q. There is a stairway on the south side of the station at Park Avenue shown on those plans,
1199 while as a matter of fact none exists today, is that not right? A. That is beyond my competence to testify, because I did nothing except the steel structure itself, and we consider the stairways as part of the ornamental work of the station, and that I did not figure up and am not competent to testify about.

Q. Well, now, you testify that the station at Third Avenue was identical with the station shown on the Damage Map? A. Yes.

Q. That is City's Exhibit No. 19. Now, is not it a fact that when that uptown track was removed there were changes made in the station at Third
1200 Avenue? A. No, sir, not that I have been able to—

Mr. Nichols: No, there never was an uptown track there. It was just on the plan, just to show the Governor's Commission. It was intended at first to have the uptown connection, but after they had the accident as they ran up from downtown, then they gave up the idea of putting in that little curve there, and they put up with the spur method. It never was built, your Honor, but it was on the original plans.

Q. Do not those plans show an overhead bridge at Third Avenue, while at the present time there

is an under-bridge? A. I do not think they do. I have no recollection of ever having seen that part of it.

Mr. Nichols: Well, that is not in the area.

The Court: They will remain in evidence for the time being.

The Witness: I have nothing to say above the tops of the structural steel, under the wooden joists.

Mr. Nichols: That was introduced in regard to checking up the matter of steel, which was the question; not for other purposes. 1202

The Court: Now, if you have actual measurements taken—

Mr. Nichols: We will have the actual measurements taken, your Honor.

The Court: Does that mean that you will have to recall the witness Burpee?

Mr. Nichols: Well, he will have to testify anyway to the rest of it, Third Avenue.

The Court: Who will?

Mr. Nichols: Mr. Burpee. He is all ready for that, but the Transit Commission have not yet determined on the plans; but that will be a very simple thing, I think, when we get the plans. We are all ready. 1203

The Court: As I understand it, you have no more proof this morning, then?

Mr. Nichols: No, your Honor, I think it would be better to defer it.

The Court: Until what date shall we adjourn? How much time do you want? Of course, I do not know what my assignments are for next year. Next month I am in a Trial Part.

Mr. LaMotte: Of course, the railroad presents its proof first, the railroad has to present its proof first under the procedure.

1204

The Court: Yes.

Mr. LaMotte: Of course, I should like to have at least four weeks to have my witnesses prepared on the real estate, but there is no reason why in the meantime, if Mr. Nichols can get ready, he should not put his testimony in, if he chooses.

Mr. Nichols: We will not gain anything in the end, if you cannot go ahead for four weeks. I say it will take three days. I am making the best estimate I can as far as our experts are concerned. We will go in three days ahead of the time that

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you are ready, so that we will not delay the determination of the matter in any way. We will have that in mind. But remember, it was the City that applied for this Extraordinary Term. They applied for it in the summer, without any notice to us, and under circumstances, so far as the real estate testimony is concerned, peculiarly embarrassing, because of the illness and absence in Europe of our man we had retained, and whom we will produce on the trial.

The Court: Let me interrupt you. You expect a determination from the Transit Commission

1206

within ten days?

Mr. Nichols: Yes, sir, I am trying to insist upon getting it.

The Court: At that time will you not be able to go on with your proof on that phase of it?

Mr. Nichols: I do not want to get the experts, who have just been brought into this thing, I do not want to crowd them as much as that, your Honor, as long as the City has not done anything and cannot get ready for four weeks.

The Court: What do you suggest, Mr. Nichols?

Mr. Nichols: Well, I would suggest that the adjournment should be for four weeks, which the

City needs anyhow, and we say that just before that we will be ready to go on with our experts. I should say about four weeks. It was suggested that we give them the results of what the experts determine they think is the value of those easements.

The Court: How soon do you think you will have that ready for them?

Mr. Nichols: Well, you see, that would be what we will be working on in the meantime, and I do not want to guess at it. I do not want to ask them. It will be the result of mature consideration of 1208 a great many details. There are millions of dollars of property involved there. I do not want to ask a man of reputation to guess at it.

The Court: This is the 14th of November. Of course, there is one week in December we would not sit, between Christmas and New Year's. I suggest this, that we adjourn now until the 17th of December, that is a Monday, and see what the situation is then. If you are not going to be able to go on at that time, let me know, and we can fix some date early in the year, when I am perhaps in Equity again. Will that be agreeable? 1209

Mr. Nichols: Yes, your Honor.

Mr. LaMotte: Surely, yes.

Mr. Nichols: I think the City and ourselves are looking forward to this case with a great deal of apprehension, because of its novelty and difficulty and complexity in many respects, and we appreciate your Honor's indulgence, and we are trying to respond by minimizing the time.

The Court: It seems to me an important case, because this question has never been before the courts before, as I understand it.

Mr. LaMotte: That is true.

1210 The Court: That is why I am particularly anxious to get the record in such shape that the question can be finally determined without another long hearing. I am confident I am right in deciding to take evidence on both phases. But I think it is well for you gentlemen to prepare to go on just as soon as you can, along the lines I have indicated. It is going to be more work, but in the end I think it will save time, than if I should adopt your views now and try this in two or three days, and have an appeal going through to the
1211 Court of Appeals, when it might be back here in a few months to try all over.

Mr. LaMotte: I would not expect to try it, however.

The Court: You may be entirely right about it.

New York, June 2nd, 1924.

Trial resumed.

Appearances: George P. Nicholson, Esq., Attorney for the City of New York by L. Howell LaMotte, Esq., of counsel. James L. Quackenbush,
1212 Esq., Attorney for Interborough Rapid Transit Company, by J. Osgood Nichols, Esq., of counsel. Messrs. Murray, Aldrich & Roberts, Attorneys for Manhattan Railway Co., by William D. Embree, Esq., and William Roberts, Esq., of counsel. William H. Page, Esq., Attorney for 42nd Street Association.

Continuation of the direct examination of GEORGE W. BURPEE:

By Mr. Nichols:

Q. Since your last testimony, at the suggestion of the Court, by agreement of counsel have you

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undertaken the determination of the weight of steel in the structure at 42nd Street? A. Yes, we have attempted to ascertain accurately the weight of the steel in cooperation with the engineers representing the Corporation Counsel of the City.

Q. Will you state how you did that? A. We started with the using of the plans as a basis and supplemented or verified the plans by actual measurements of the structure, measuring the heights of the columns, depths of the girders and members and so on when there was any doubt, so that we could agree that we had as thorough a knowledge 1214 of the sizes and weights of the steel of the structure as was reasonably obtainable. The operation of making the necessary measurements lasted from about the 20th of November until the 6th of December, that is making the measurements until both the engineers for the City and ourselves were satisfied that we were in reasonable agreement as to the steel quantities.

Q. Did you do that work in association with the engineers of the City? A. Yes, we did.

Q. Did you reach an agreement as to the weights? A. Yes, sir, that is my understanding. 1215

Q. What is your understanding of the agreement reached in cooperation with the City engineers of the exact measurements of the steel?

Mr. LaMotte: Your Honor will recall when we were here before the City objected to this line of testimony upon the ground that no foundation has been laid for it, so I merely want to interpose an objection here on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Exception taken by Mr. LaMotte.

A. We found the weight to be 629.6 tons, that is

1216 the steel actually within the condemnation area, exclusive of steel which is rendered useless by the demolition of the spur and which was not actually within the condemnation limits.

Q. To what portion of the steel does that weight refer inside the condemnation area, as you have limited it? Did it include the steel rails, for instance? A. No, sir, this weight I have testified to is the structural steel above the column bases. It does not include the column bases and does not include the fenders. It includes the columns,
1217 longitudinal and transverse girders and the structural steel supporting the platforms.

Q. Was there an agreement as to the steel to which this weight related, as well as to the weight itself as you have stated it? A. Yes, sir, the definition of the steel included in these weights was agreed upon.

By the Court:

Q. What was that again, the structural steel in the superstructure and the platforms? A. Yes, sir, what is commonly defined as structural steel as
1218 distinguished from cast iron column bases and steel pipe railings on the structure and on the deck of the structure.

Q. Did it include the columns running to the street? A. It would include the columns and longitudinal transverse girders.

Q. You say 629.6 tons? A. Yes, sir.

Q. It did not include the rails? A. Your Honor, it doesn't include the pipe railings along the deck of the structure outside the track.

Q. But does it include the rails of the track? A. No, sir, it does not include the running rails for the tracks, they are included under "track."

1219

Cross examination by Mr. LaMotte:

Q. Your testimony as to the structural value of the spur as given on the previous court day was $201,320, do you recall that? A. You mean exclusive of all general overheads, contingencies and so on?

Q. I mean exclusive of depreciation, that is all.

The Court: Having allowed depreciation, I have it as $201,322.

The Witness: That is correct, yes, sir.

Q. Now, do you recall what change this makes in your estimate? A. This specific change in the weight of steel makes a difference of $960 in our estimate.

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Q. Do you mean to tell the court that that is all you have reduced your estimate? A. That is the only change we have made on account of this item, yes, sir.

By the Court:

Q. Nine hundred and how much? A. $960.

By Mr. LaMotte:

Q. Have you made a change on account of any other item? A. Yes, sir, in an effort to eliminate all needless controversy, we have changed as many items as we thought necessary.

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Q. What items have you changed? A. We have eliminated first on the steel. I stated a quantity of 629.6 tons within the condemnation area. Our previous estimate was 643 tons, including five tons outside the condemnation area or five tons and a fraction, so that the total reduction in steel weights is a net of eight tons. Then we have taken out 5 tons that are outside the condemnation area and included those as special claims for damages.

1222 *Claimants' Witness—George W. Burpee—Cross.*

Q. Haven't you taken that out of your estimate of $201,000? A. No, sir, we have set up an estimate including the same items, according to the same definition as the City's engineers, and in order to do that we took this five tons out of one place and put it in another. It didn't diminish the total result.

Q. Well, can't you tell us, please, what you now estimate to be the present estimate of what is known as the spur?

The Court: Which he has heretofore estimated
1223 at $201,000?

Mr. LaMotte: Yes, which he has heretofore estimated at $201,000.

By the Court:

Q. In other words, to what extent have you reduced it. You have told us you reduced it by $960; is that all the reduction you made? A. No, sir, that is not all the reduction.

Q. That is what Mr. LaMotte wants to know. A. We have reduced our estimate a total of $10,445.

By Mr. LaMotte:

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Q. Just state what items you have reduced and why you reduced them. A. Foundations we reduced $838.

Q. Why? A. As a result of conferences with the representatives of the City, by slight changes of quantities and in a general effort to, in so far as possible, eliminate any useless waste of effort.

Q. What is the next one? A. Steel superstructure, including the five tons I have mentioned as well as the $960, $1,181. The track and decking we have increased $704, as a result of similar comparisons of inventory. The signals we have re-

1225

duced $843. The electrical work $390, stations and miscellaneous buildings, $7,897.

Q. Are those all the reductions you have made? A. Yes, sir.

Q. That makes your present estimate of the value of the structure how much? A. With those figures I have stated for depreciation—with depreciation our present estimate is $185,513.

Q. How much? A. $185,513. There is a discrepancy there which is due to the elimination of certain items that are outside of the condemnation area.

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Q. Did you change your overhead or intangibles? A. We had included no allowance for intangibles. We changed our contingencies to represent five per cent. of our new base cost, and our engineering was five per cent. of the base cost, interest during construction and cost of financing were changed to correspond with the new base cost.

Q. In your former estimate you added about $40,422, or 22.7 per cent. to your cost of reproduction for overheads and intangibles, do you remember that? A. Yes, sir.

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Q. Have you changed that figure? A. We have changed that partly to accord with the new face value, yes, sir.

Q. You mean the same percentage exists? A. The same percentages, yes, sir.

Q. That is, your overheads and intangibles today would be about 22.7 per cent. of your cost to reproduce? A. They might be that, yes, sir, but that does not include intangibles; those are all tangible items, we have not included any allowance for intangibles.

Q. You mean there are $40,422 worth of tangible

1228 items? A. If we take exactly the items included by the City's engineers which I think may avoid misunderstanding in this particular discussion, we get a base value of cost to reproduce new of $180,332. To that we add for omissions and contingencies five per cent., which is $9,017, which gives us a base cost of the structure of $189,349. To that we add for preliminary and organization expense, for administrative expense, for engineering and superintendence and for legal expense a total of $18,000, every item of which is tangible,
1229 and the answer should be the cost to reproduce that spur.

Q. Did you do that by percentage? A. Not entirely by percentage, but very largely so.

Q. In other words, you added a certain percentage for overhead, and then you added a certain percentage for what you just described, taking in the percentage of the overhead as well? For instance, you add about 11¾ per cent. for omissions and contingencies, then you add 11¾ per cent. for overhead on that? A. I beg your pardon. We add five per cent. for contingencies.

1230 Q. Omissions and contingencies? A. Five per cent.

Q. What per cent. for overhead? A. For preliminary and organization expense, two and one-half per cent. of the base cost, including the contingency; for administrative expense, about one per cent. or $2,000; for engineering and superintendence, about five per cent. or $9,000; for legal expense, $2,000, making a total of nine and one-half per cent. and on top of those, interest during construction of $4,865, and that is two and one-quarter per cent. of the grand total cost; then four per cent. of the grand total cost for cost of financ-

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ing is $8,842, making a total added to the base cost of $31,707.

Q. This cost of financing, isn't it a fact that according to the rules laid down by the uniform system of accounts that that must be taken care of in the income from the property? A. No, sir, not this item. The discount on bonds, yes.

Q. Have you allowed discount on bonds? A. We have not, no, sir.

Q. Isn't that cost of financing, that is, providing for the sale of bonds, taken out of the income of the property and not added to the cost of construction? A. No, sir, the common practice is to add it to the cost of construction. It is recognized as a part of the primary cost of constructing any property.

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Q. You have given what percentage of depreciation here? A. The percentage of depreciation averaged, using again these figures which cover the same items as the city's engineer's cover—we have depreciated the total value $45,150, which is very close to being twenty per cent; in other words, the present value of the structure is about 80 per cent. of the cost to reproduce new.

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Q. Didn't you testify before that your depreciation was about eight per cent.? A. Was about how much?

Q. Eight per cent.? A. No, sir.

Q. What percentage of depreciation have you given on the steel? A. Approximately eleven and one-half per cent. on the steel.

Q. How many years has that steel been there? A. That steel has been up about 43 to 45 years.

Q. If it has depreciated eleven and one-half per cent. in 45 years, how many years do you figure

1234 it would stay there? A. I will say it is indefinite; it might stay there a thousand years with proper care.

Q. That is, if it was put up there when Columbus discovered America, according to your idea it would still be all right? A. Very easily, yes, sir.

Redirect examination by Mr. Nichols:

Q. Did you go over with the City's representatives as you did in the matter of the weight of the steel, the various discrepancies, with a view to re-
1235 ducing them to a minimum? A. Absolutely, yes, sir. What we wanted to do was to eliminate any unnecessary controversy over small points.

By the Court:

Q. That is, as to quantities? A. As to quantities, and even as to prices, your Honor.

Q. And the changes in the ultimate figures which you have given, making the aggregate of cost that you now testify to as the result of the changes in quantities in the inventories as well as the steel, reached as a result of co-operation with the City in actual field measurements? A. Yes, sir, that is
1236 correct.

Q. How much time did that take all together? A. Altogether it took from about the 20th of November until the middle of January, about two months, not an absolutely continuous effort, you understand, but almost continuous on the part of some men, both of our own and of the City's engineers.

Q. And did you also seek to eliminate as far as possible all unnecessary matters of controversy in respect of values? A. Yes, sir, in so far as we could.

Q. And the percentage of depreciation? A. Yes.

Q. To what extent did you virtually reconcile your views with those of the City in regard to the percentages of depreciation? A. We did not attempt to reconcile depreciation absolutely, because although aside from the depreciation on the steel our depreciation was more severe than the City's engineer's—for instance, track structures they depreciated more lightly than I did—I mean the track, not the structures—the track we depreciated very, very heavily, whereas we depreciated the steel rather on a basis of its actual value as a 1238
structure rather than on a theoretical life of 100 years. I understand the City's engineers figured the total life of the structure at 100 years and depreciated it on the basis of 45 years life, and depreciated it 45 per cent., which of course is more than our eleven and one-half per cent. We arrived at our 11½ per cent. by an estimate of the amount of money required to spend on that structure to make it as good as new, which included reinforcing connections and scraping it down and giving it a new coat of paint.

Q. The steel columns you assumed to be prac- 1239
tically permanent in character? A. Yes, sir.

Q. Just as the steel work that composes the dome of St. Peters? A. Yes, sir.

Q. No sign of giving out at all? A. No, sir.

Q. Have you stated, Mr. Burpee, in your testimony this morning the points of adjustment in respect to all the items, composing your total value of the structure reached as a result of the examination and consultation with the City engineers? A. Yes, sir, I have stated the points of difference. I have not listed item by item the particular parts of our previous inventory which were taken from our previous estimate and included in other items

1240 of damage, with the exception of the five tons of steel.

Q. You are referring now to the amounts that you have eliminated because your present estimate relates only to structures within the condemnation area? A. Yes, sir, and more specifically structures covered by the City's engineers. I have been quoting from an estimate made item by item as nearly parallel to the City engineer's estimate as I could, for the purpose of ease in comparison.

Q. So that the testimony of the City will relate
1241 to the same quantities, the same inventories, and we can then determine the remaining points of difference? A. Yes, sir.

The Court: As I view it, you have come about $16,000 closer than you were at the last hearing?

Mr. Nichols: Yes.

Q. Are there any elements that have resolved in change of your valuation because of the fact that there has been some salvage that has become apparent because of the manner in which the work has been done? A. Yes, sir.

The Court: Does it matter very much what
1242 brought about this change? It is done. I do not suppose the City will make any claim—

Mr. Nichols: Some of the apparatus we found did not have to be destroyed, and we could salvage it by taking it off, and that explains to some extent the discrepancy in the testimony, as the result of an effort to reach an agreement.

Q. The signal telephone apparatus and the circuit breaker, has it been found those could be preserved to some extent? A. Yes, sir. The circuit breaker was salvaged and used by the Interborough. The telephone instruments and signal apparatus which we included in our previous es-

timate, were actually moved by the Interborough and used somewhere else. The feeder cables, which were in the structure, were also removed by the Interborough and salvaged. So we eliminated those, with the exception of a small amount of labor required to make the change, we eliminated those from our previous estimate.

Recross examination by Mr. LaMotte:

Q. Do you know whether in the annual reports of the railroad to the State for the purpose of taxation they have reported an annual depreciation in the structure of this railroad? A. You mean the reports of the Interborough Rapid Transit Company?

Q. Yes.

Mr. Nichols: I object to that, unless it is directed to the spur in question. The scope of your question related to some general depreciation of the structure.

The Court: Yes, I assume you intend to inquire about the spur, don't you?

Mr. LaMotte: Yes. The chances are they have made it applicable to the whole system.

The Court: Does the witness know anything about it?

Q. Do you know anything about it? A. I have never seen any such reports, no, sir.

Q. Did you ever see the uniform system of accounts of street and electric railways as prescribed by the Public Service Commission of this department? A. Yes, sir.

Q. (Handing paper) Is this it? Are they the rules? A. Yes, sir.

Mr. LaMotte: I offer in evidence pages 26 and 27 of the rules; the rule I refer to is rule 331 in

1246 reference to unamortized debt discount and expense.

Mr. Nichols: I object to that as irrelevant, incompetent and immaterial. It is a rule established by the Commission of a general character. We might of course put in evidence a vast number of rules of the United States Interstate Commerce Commission and other bodies.

The Court: How is this relevant?

Mr. LaMotte: This witness has included in his cost to reproduce, I contend, many of the items
1247 which under that rule are required to be taken out of income from the road, and it is not a proper charge of the cost to reproduce that structure.

The Court: How is this ruling binding, assuming it has been adopted?

Mr. LaMotte: It is the rule of the Public Service Commission, which has the power and control of the organization of these companies and the method of bond issue.

The Court: Mark it for identification.

Mr. LaMotte: You won't pass on it now?

The Court: No, just mark it for identification.

1248 (The pages were marked City Exhibit No. 21 for Identification.)

Cross examination by Mr. Page:

Q. Mr. Burpee, with regard to this item of depreciation, is that not currently an ingredient of all reports made by railroad companies, either for the purpose of the income tax or local or state taxes or other taxes which are paid by the railroad company, on the books of the company? A. Yes, sir, I believe it is, and I understand it is the practice to make such reports, but I have never seen a report, as I said, made by the Interborough Com-

1249

pany for tax purposes, I have no knowledge of the amount they have allowed.

Q. But you are an expert familiar with books properly kept by corporations with regard to current entries in them. Have you ever known of a case where the item of depreciation was not specified in the books of the corporation and on the basis of which its reports for the purpose of taxation were made? A. It is an item on the account for purposes of taxation, but most railroad companies do not on their own books set up a depreciation account for other than equipment and rolling stock.

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Q. Not for structure? A. The books on which the returns to the stockholders are made ordinarily do not include a charge for depreciation, except on equipment and rolling stock.

Q. But what may be the case with the Interborough you do not know? A. I do not know what their reports to the Tax Commission are.

OTIS E. HOVEY, called as a witness in behalf of the claimants, being duly sworn, testified as follows:

1251

Direct examination by Mr. Nichols:

Q. What is your business, Mr. Hovey? A. Civil Engineer.

Q. And where and in what connection have you conducted that business? A. I am assistant chief engineer of the American Bridge Company here in New York.

Q. What has been the character of the work of the American Bridge Company? A. Well, they are specialists on the construction of bridges, buildings and all other forms—practically of all

1252 other forms of heavy steel construction, known as structural steel work, in a broad way.

Q. How long have you been associated with the work of heavy steel construction? A. Since 1886.

Q. Are you familiar with the construction of elevated railways? A. Yes, sir.

Q. Where? A. Well, in various parts of the country, that is, not only in New York, but in Chicago particularly, Philadelphia.

Q. Have you estimated the cost of construction of elevated railways? A. Oh, yes, sir.

1253 Q. Particularly the erection of steel work? A. Yes, sir, more particularly the steel work.

Q. Are you familiar with the elevated railroads in the City of New York? A. Practically so, some portions more thoroughly than others.

Q. More particularly with construction of the character of the elevated railway in the spur on 42nd Street? A. Yes, I have investigated that recently.

Q. Have you sold steel for elevated railroad construction in this city? A. Yes, sir.

Q. Have you sold it for the work on the most recent elevated railway construction in the City?

1254 A. A portion of it, yes, sir.

Q. Section No. 2, the extension of the Corona Branch to Flushing on Roosevelt Avenue? A. Yes, sir.

Q. Did you sell the steel for that? A. Our company sold the steel, yes, sir.

Q. And you are familiar with the character of the steel and the prices? A. Yes, sir.

Q. What was the character of the steel used in that construction?

Mr. LaMotte: I object to that as immaterial, irrelevant and incompetent, going into a collateral

1255

issue. How are we concerned about what some company out in Corona paid for steel?

The Court: This relates to his experience.

Mr. LaMotte: He is asking the price.

Mr. Nichols: On cross examination of Mr. Burpee the first question asked him was whether he was familiar with this construction of the Corona branch and the price of the steel in that contract.

Mr. LaMotte: That is all right, that is cross examination.

The Court: I do not think you are concerned on the direct examination with the price. Have him state his experience and knowledge generally of steel structures of similar character.

1256

Q. You are familiar with the steel used in the Corona extension to Flushing, are you not? A. Yes, sir.

Q. That is Section 2 of Route 52? A. Yes, sir.

Q. In which the contract was let referred to in the previous testimony? A. Yes, sir.

Q. In what respect does that differ from the steel used in the 42nd Street spur?

Mr. LaMotte: I object to that for the same reason, immaterial, irrelevant and incompetent.

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The Court: Sustained.

Mr. Nichols: Exception. I am merely trying to use that as a basis of comparison.

The Court: That is a matter of cross examination I think. He may state his qualifications generally, and then you may prove whatever facts you wish, and that will all come out on cross examination.

Q. What is the cost or fair market value as of December 7th, 1923, of steel of the character used in the 42nd Street spur structure?

1258 *Claimants' Witness—Otis E. Hovey—Cross.*

Mr. LaMotte: I want to cross examine this witness before that is answered.

The Court: You may.

Examination voir dire by Mr. LaMotte:

Q. Mr. Hovey, did you say you made an examination of the 42nd Street spur? A. I looked it over, yes, sir.

Q. When did you look it over? A. I think it was the 1st or 2nd of March, this year.

Q. How many days did you look it over? A. I
1259 went over it in one day.

Q. Did you measure it up? A. No, sir.

Q. Have you estimated the cost to reproduce that structure? A. I have not estimated weights, no, sir. I have estimated what the contract price should be to reproduce such a structure. I made no estimate of weights of any kind.

Q. So you are not prepared to testify what it would cost to reproduce that spur on December 7th, 1923? A. I am by the pound, or by the ton, yes, sir.

Q. In the first place that structure is not steel,
1260 is it? A. No, sir, it is iron or was.

Q. Are you connected in any way with the railroad? A. No, with no railroad, I am connected with no railroad whatever.

Q. What is your business? A. I am a civil engineer.

Q. Where is your office? A. 71 Broadway.

Q. What firm are you connected with? A. American Bridge Company.

Q. Have you anything to do with the giving out of contracts for bridge construction? A. We don't give out contracts, we take them.

Q. Take them? A. Yes, sir.

1261

Q. You mean you do the work yourselves? A. We do the work ourselves.

Q. Did you ever build an elevated railroad structure? A. Our company has built many.

Q. Where? A. In Chicago, Philadelphia, New York.

Mr. LaMotte: I object to this testimony unless he can testify to the cost of reproducing that structure; that is the issue here.

The Court: I cannot tell what he will testify to yet. Objection overruled.

1262

By the Court:

Q. To what extent did you examine the structure, how much time did you spend there? A. I spent a portion of one day.

Q. What did you do there? A. I walked over the thing.

Q. Went up on top of it? A. I had been on top of it, I didn't go up that day.

Q. Examined the columns? A. Yes, sir, I looked at the columns.

1263

By Mr. LaMotte:

Q. What measurements did you take? A. None whatever.

Direct examination (continued) by Mr. Nichols:

Q. You sell steel, you did for the Flushing extension built by the City, by the ton? A. Yes, sir, by the ton or pound, whichever is desired. That was by the ton.

Q. Assuming a certain tonnage in that spur, and knowing the character of the steel, you would make your estimates exactly as you did when you sold it to the City for the elevated railroad at Flushing?

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Mr. LaMotte: I object to it as cross examination.

Mr. Nichols: I want to qualify him.

The Court: Objection overruled.

Exception taken by Mr. LaMotte.

A. I make estimates regularly, not only on elevated railroad but other structures, that is, it is a common practice to base an estimate of one structure upon the experience in another.

Q. How much tonnage in a year do you estimate upon for the American Bridge Company? A. That

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is a difficult thing to state, because in my capacity as assistant chief engineer it is the guidance of estimates rather than the making of them, usually.

By the Court:

Q. Are you depending upon your own estimate, by observation of the amount of steel in the structure, or are you assuming these figures that have been given by the previous witness? A. I am starting with the figures on weights given by the previous witness, and then I am proceeding to make an estimate from my experience of what it would

1266

cost to produce such a structure weighing that number of tons, 630 tons or whatever it is, on 42nd Street, to replace the spur.

By Mr. LaMotte:

Q. Does your estimate include everything that is there, the tracks and station? A. No, sir, steel only.

By the Court:

Q. Just the amount of steel of 630 tons? A. Yes, sir.

Mr. Page: Is this structure concerning which

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the witness is going to testify steel, with which he has experience, or is it wrought iron, which is no longer produced and used for those purposes?

The Witness: The old structure was wrought iron, of course.

Mr. Page: Do you make wrought iron in your factory?

The Witness: We do not.

Mr. Page: That is the point.

The Court: Is it contended by the City that the structural value must be based upon wrought iron rather than steel?

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Mr. LaMotte: As I understand it, wrought iron is no longer made.

The Court: So you have got to use steel.

Mr. LaMotte: You have to base your cost of reconstruction upon something. I do not want to be captious. If steel cost no more than wrought iron and that is the stuff that is being used, I do not see any point in it.

By Mr. LaMotte:

Q. Is wrought iron more expensive or less expensive? A. More expensive.

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Mr. Nichols: We are trying to reproduce it the cheapest possible way.

Mr. LaMotte: You are trying to reproduce it in the only way you can reproduce it.

The Court: Proceed. You are assuming the structure would require 629.6 tons of steel, as referred to by Mr. Burpee?

The Witness: Yes, sir.

By Mr. Nichols:

Q. Will you describe the character of the steel in the structure? A. Well, the structure is what

1270 we ordinarily call a lattice girder construction. The columns consist of channels, with the flanges turned inward and laced together, and the cross trusses were of lattice construction, openwork, longitudinal girders of the same character, and the structure was complicated by a curve at the Third Avenue end and crossovers for facilities at the station. That is, in other words, these lattice girders were not usually parallel, they ran at all sorts of angles with respect to the transverse girders.

1271 Q. How long was the structure? A. Well, I did not measure it, I suppose it is nine or ten hundred feet.

The Court: I do not see that that is important, as long as you have the measurements of the steel and know the structure.

Q. Is there a difference in the cost of furnishing the steel for a short structure, which is curved, as you said this was, rather than an extensive structure?

Mr. LaMotte: I object to it as matter for cross examination.

1272 The Court: Ask the direct question.

Q. How much, as of December 7th, 1923, was the fair market value of the steel of the character that was used in the structure, assuming that steel instead of wrought iron would be used, under modern conditions? A. Do you want that delivered?

Q. I want just the cost of the steel? A. Delivered, $108.60 per net ton of 2,000 pounds.

By the Court:

Q. Just give me those figures, the cost of steel?

1273

A. Delivered in New York, f.o.b. New York, $108.60 per net ton of 2,000 pounds.

Q. Give me the total. A. I haven't figured that way. I will do it. Do you want me to use that fraction in the weight?

Q. Call it 630 tons, just for the purposes of the computation. A. Taking 630 tons as the quantity and $108.60 per ton produces $68,418.

The Court: Cross examine.

The Witness: I want it clearly understood that is delivered at New York.

The Court: Yes, delivered at New York.

1274

Cross examination by Mr. LaMotte:

Q. You say you had something to do with the building of a structure in Corona? A. Our company is furnishing the Section 2.

Q. Was that steel of the same character as this steel? A. No, sir.

Q. What kind of steel was that? A. If you mean the steel, the metal, yes. What are you driving at—

Q. I am driving at the same kind of material, not the shape. A. The material is the same, yes, sir; the fundamental steel, the metal from which it is made, is the same that I figured upon.

1275

Q. Your company took a contract to place that steel, erect it out there for how much? A. We did not take a contract to erect it. We took a contract to deliver that steel for a certain price.

Q. At the place of construction? A. No, sir, at New York City, what is known as f.o.b. New York City. That meant within lighterage limits.

Q. What was the price? A. $82.20 a ton, and still in tons of 2,000 pounds.

By the Court:

Q. That is what the steel sold for? A. That is

1276 what the steel sold for on Section 2, Corona, delivered f.o.b. New York.

By Mr. LaMotte:

Q. Now, you are charging in this case for steel of the same metal delivered in New York $103? A. $108.60.

Q. What difference is that, between what you sold and delivered for the Corona work and what you would deliver for the 42nd Street spur? A. $26.40.

1277 *By the Court*:

Q. Counsel wants to know what is the cause for the difference in the cost of the steel in the Corona structure and this steel? A. There are many causes, first, the $82.20 was a highly competitive price at a certain date. That is one of the fundamental reasons. Whereas my estimate here has a customary profit of ten per cent. on the net cost. Another reason was the fact that the Corona line is what they call standard construction that is being used in the elevated railways at the present time and is plate girders throughout and very simple,

1278 and considerably heavier per lineal foot than this 42nd Street spur. Another reason is that the Corona extension is practically or almost exactly a straight piece of work, while this other one is very much twisted and curved on account of the necessities of the track.

By Mr. LaMotte:

Q. How much did you increase your estimate here by lack of competition? You say you reduced the other as result of competition? A. I have told the Court that I figured ten per cent. profit on this estimate.

By the Court:

Q. You mean on the estimate— A. —that I gave of $108.60, that includes a profit of ten per cent.

By Mr. LaMotte:

Q. Take the ten per cent. off and what do you get? A. $98.80.

Q. Didn't you add ten per cent. profit to the Corona job? A. I added nothing, I did not bid it, I had nothing to do with it.

Q. You said the reason that was low and this what it is was because of severe competitive bidding for the Corona job, isn't that right? A. Yes, sir. 1280

Q. What difference does that severe competitive bidding make? A. It may make the whole of the profit and it may make more.

Q. What do you know that it makes, how much, can't you tell us? A. No, sir, I cannot tell you what the ultimate exact cost of that Corona line will be, no one else can.

Q. You say this is more expensive by reason of it not being along standard lines, is that it? A. That is one of the reasons. 1281

Q. How much difference does that make? A. That question of yours is a very broad one. It makes the whole of the difference, because it is not along standard lines.

Q. You know, don't you, that steel construction work is stronger than the structure made out of wrought iron? A. Yes, sir.

Q. In other words, a structure built in 42nd Street of steel of the same size and dimensions as the one that is there today would be about thirty per cent. stronger than the present one,

1282 isn't that right? A. That is just about right, yes, sir.

Q. If you were to estimate the cost of building a structure there which has the same durability, that is, that would carry the same weight and all that sort of thing as the present structure, couldn't you do that along the regular lines? A. Not for that purpose, not for that spur, because the facilities required the complexities of the structure, the facilities required in the switching of those trains, the complex structure.

1283 Q. The supports would be the same? A. The supports are perfectly simple.

Q. And the columns are the same? A. The columns are perfectly simple, yes, sir.

Q. What is there then out of the ordinary, if the supports and the columns are the same, what part is out of the ordinary? A. It is the fact that these columns were connected by lattice trusses, openwork trusses, and then in order to provide the facilities, the curvature that was necessary to handle trains, the girders upon those or framing into those transverse trusses had to be placed around curves, and there was a crossover in both

1284 directions, so they became of odd lengths and placed in a peculiar manner in respect to the girders that supported them.

Q. That only relates to those particular pieces of steel, doesn't it? A. It related to the transverse girders.

Q. But take the supports and take the cross beams, it does not relate to them? A. It does relate to cross girders, because provision had to be made for each one of these skewed connections. The skewed connections of the longitudinal girders on each of the cross girders, they came in at par-

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ticular points and other provision had to be made at odd points.

Q. On what portion of the structure can the ordinary standard steel be used? A. None, if you mean by standard the regular construction on elevated railroads now.

Q. Yes. A. None.

Q. Supports? A. No.

Q. Columns? A. No, they are somewhat different.

Q. But take the columns you used in Corona, that was an elevated structure? A. Yes.

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Q. Why couldn't they be used here? A. Well, it would become a question of the length of the columns, of course. If you allowed flexibility in both directions, the kind of a column used at Corona would be perfectly suitable to this spur.

Q. You did not reproduce a wrought iron structure here, you deviated to the extent of using steel because wrought iron is no longer used. Why do you have to specially build a column of this shape in wrought iron when a standard column will do the purpose here?

The Court: You mean in steel, don't you?

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Mr. LaMotte: Yes, suitable steel.

A. When asked the question as to what the cost is of reproducing a particular structure, one necessarily tries to answer it.

Q. You cannot reproduce this because wrought iron is not made? A. Probably not.

Q. You go off and take steel, you do not follow the original construction there? A. No.

Q. Yet you take steel and reproduce a column exactly like the wrought iron column which costs more than the ordinary steel column which would answer the purpose? A. It would cost more principally because it was wrought iron.

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The Court: Isn't that the proper test in these cases, haven't they to follow the exact structure?

Mr. LaMotte: If they did, they better take wrought iron.

The Court: There is not any.

Mr. LaMotte: They do not take wrought iron, they take steel, yet steel is stronger, the regular column would answer the purpose, yet they specially manufacture a steel column of the particular shape and size that they built when using wrought iron for no other purpose that I can see

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except to run up the cost.

Mr. Nichols: Steel is cheaper.

Redirect examination by Mr. Nichols:

Q. The difference in cost owing to the shortness and irregularity of the structure, the latticed quality and the larger number of members per ton was figured out by you in accordance with your shop practice on the standard lines used by the American Bridge Company? A. Yes, sir.

Q. The difference is accounted for in detail by exact physical differences in the character of the steel and in the character of the work itself? A.

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Yes, sir.

Q. All of which you are ready to state? A. Yes, sir.

Mr. LaMotte: Of course it is understood that my original objection to this whole line of testimony is applicable to all of it.

The Court: Yes, you have protected yourself against proof of structural value here until a proper foundation has been laid, according to your theory. In other words, Mr. Nichols, the City's contention is that before you can prove structural

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value in this case you have to prove that a reasonably prudent man would purchase this structure or would construct it or reproduce it under the circumstances. What does "construct" there mean, does it mean the owner would construct or the contractor would say he would construct this—

Mr. LaMotte: That a man who wanted to invest his money would want to invest in it.

The Court: Either purchase or build it.

Mr. LaMotte: Exactly. In other words, if a structure has no earning capacity and is worth nothing, it is not worth the cost of its reproduc-

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tion.

The Court: What is your contention with reference to this property, that it has an earning power?

Mr. Nichols: That it has very great earning capacity; that it is the one entrance of the New York Elevated Railroad system to this center of traffic.

The Court: Are you going to offer proof of that?

Mr. Nichols: Yes.

Mr. LaMotte: Why can't you go on with that?

Mr. Nichols: I want first to clean up the struc-

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tural value, and I want to get rid of that.

The Court: Have you any objection, Mr. LaMotte, after he finishes his testimony on the structural value, to put your experts on and get all of that branch of the case in together?

Mr. LaMotte: I will do that.

WILLIAM F. HARDEN, called as a witness in behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. What is your business, Mr. Harden? A. Steel contractor.

1294 *Claimants' Witness—William F. Harden—Direct.*

Q. And what experience have you had in the construction of heavy steel work in the City of New York? A. In the City of New York very little. We erected some buildings here in New York.

Q. In general then. A. In general, the heaviest work we have had is in schools in Brooklyn, the girders run there to along about twenty or thirty tons.

By the Court:

Q. Your general experience as a contractor, give
1295 us that. A. Taking down some elevated railroads in Brooklyn, putting up some large smoke stacks for the Brooklyn Union Gas Works, taking down the 42nd Street spur, and other work that I don't remember now offhand, but we have done a lot of it.

By Mr. Nichols:

Q. Are you familiar with the conditions under which steel work in streets is handled? A. In streets?

Q. Yes. A. Yes, some.

1296 Q. You are in 42nd Street? A. Yes, sir.

Q. Did you take the contract from the City for the demolition of the 42nd Street spur?

Mr. LaMotte: I object to that.

The Court: This is just his experience.

Mr. LaMotte: Is this witness called to testify to reproduction cost of the spur?

Mr. Nichols: No, merely the cost of construction under those street conditions there.

The Court: I will allow it.

A. I bought the structure from the City.

Q. You bought the structure? A. Yes.

Q. You are familiar with the character of the structure? A. Yes, sir.

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Q. And you are familiar with the cost of erecting steel work? A. Yes, sir, we figure on that kind of work.

Q. Will you describe the conditions in 42nd Street, is there heavy street traffic? A. The traffic was so numerous on 42nd Street, we had to buy tarpaulins to put under the structure to keep anything from falling down on people going to and fro. I would not venture to say how many people passed in and out of the Grand Central.

Mr. LaMotte: I do not see where this is material. I object to this line of testimony. The company has produced a witness to testify to the cost of reproduction— 1298

The Court: Just let Mr. Nichols straighten him out.

Q. You are familiar with the cost of erecting elevated railway structures under conditions such as existed in Section No. 2 of the Flushing route out at Corona, are you not? A. I figured on that work, yes.

Q. You figured on that very work? A. Yes.

Q. What, in your opinion, would be the cost of erecting the steel per ton, as of December 7th, 1923, in 42nd Street under the conditions as you observed them there in the process of your work of demolition? 1299

Mr. LaMotte: I object to the question. He has not been qualified to pass upon such a question.

The Court: Qualify him further.

Q. You say you are familiar as a steel contractor with the erecting and demolition of elevated railroad structures? A. Yes, sir.

By the Court:

Q. Tell us all the experience you have had in

1300 that? A. We have taken down the Grand Avenue in Brooklyn and the Park Avenue about 1892, and this structure here. Those are about the only structures I know that have been demolished in the greater city.

Q. You are familiar, are you not, with the character of steel structures in the course of erection? A. Yes, sir.

Q. You have had work of that character to do? A. Yes, sir.

Q. So you are familiar with both the nature
1301 of demolition of steel structures and the erection of them, aren't you? A. Yes, sir.

Cross examination (preliminary) by Mr. LaMotte:

Q. What elevated railroad structure did you ever build? A. The 35th Street yard of the B. R. T. in Brooklyn, 35th Street and Fifth Avenue.

Q. What elevated structure? A. That is an elevated structure.

Q. When did you build that? A. That was along about 1896 or 1897.

Q. What have you done since 1896? A. The
1302 yard out at East New York, Manhattan Crossing.

Q. When you speak of a yard, do you speak of elevated structures? A. The elevated railroad yards, to run in and store in, the same as the elevated structure.

Q. Did you do the steel work? A. Yes, sir.

Q. What steel work did you do? A. We erected that steel for the storeyard at Manhattan Crossing at East New York.

Q. What steel did you erect? A. Erected the columns and erected the girders and transverse and longitudinal girders.

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Q. That was in 1896? A. About that time, yes, as near as I can remember, about three or four or five years after we demolished the Grand Avenue and Park Avenue.

Q. Did you ever erect an elevated railroad in a street? A. No, not in a street.

Q. You tore them down? A. Yes, and assisted to erect them.

Q. When was the last contract you had for the erection of a steel structure of any kind? A. About, I think, 1912, 1913 or 1914.

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Q. You haven't erected any since? A. No. That was with Lucius, on the Roosevelt Avenue branch, going out from Long Island City.

Q. What did you do with Lucius? A. We hauled steel and erected it and the largest of the girders we erected for Lucius.

Q. How did you erect it? A. Took it and hauled it out to the job and hoisted them and set them in place.

Q. Is that all? A. That is all.

Q. You did not buy them? A. Oh, no.

Q. You did not pay the cost of riveting them together? A. Yes, that was my part of it.

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Q. To do what? A. To pay the cost to erect them, rivet them, set them up in place and rivet them and paint them.

Q. You never bought steel? A. No, I don't fabricate steel.

Q. This contractor that had that job simply hired you to raise up the girders? A. Yes.

Q. Is that the case in all these contracts? A. Pretty near.

Mr. LaMotte: I object to this witness's qualifications.

Mr. Nichols: I only call him for the purpose

1306 *Claimants' Witness—William F. Harden—Direct.*

of proving cost of erection under those conditions in 42nd Street.

The Court: Objection overruled.

Exception taken by Mr. LaMotte.

Direct examination (continued) by Mr. Nichols:

Q. The answers you have given as to the dates you have worked on steel construction related to elevated railroad structures? A. Yes.

Q. You have a general experience in school buildings and other large steel construction? A.

1307 Yes.

Q. That is your business now? A. Yes.

Q. Continuing at the present time? A. Yes.

The Court: Is this an element of damage in addition to that testified to by Mr. Burpee?

Mr. Nichols: Not an element of damage, but in corroboration of Mr. Burpee, to show the actual cost of the work in 42nd Street. I am trying to clear up the point raised by my friend that there was lesser cost on Roosevelt Avenue.

Q. Are you familiar with the construction of Section No. 2 on the Roosevelt Avenue Branch?

1308 A. Yes, I am fairly familiar, I went over the ground and figured on the work.

Q. What kind of a street was that? A. Part of it macadam, runs out, I think to 114th Street, and it is soft from there to the causeway, then you begin on the filled in swamp,—

Q. Section No. 2, that is soft? A. Soft.

Q. And is it a dirt road? A. Yes, sir.

Q. Is it built up to any extent on the sides with houses? A. No, not on that section.

Q. That is practically open country? A. Yes.

Q. You have regard to the difference in the cost of erection between a locality of that sort and a street like 42nd Street? A. Yes.

Claimants' Witness—William F. Harden—Direct. 1309

Q. What did you find to be the conditions of work in 42nd Street when you took the structure down? A. It was quite a hazardous job to get away from the cars and people crossing underneath.

Q. Did you find interruptions of the work in the rush hours when the street was most crowded? A. Yes, we could do very little work while that was going on, hampered a lot.

Q. Street cars passing underneath? A. Street cars and people, both.

Q. Did you have to take extra precautions in 1310
regard to the work, which would not be necessary on a route like the Flushing route? A. Oh, yes, you would have to necessarily, yes.

By the Court:

Q. You contend because of these congested conditions that there would be an added cost of construction?

Mr. Nichols: Oh, yes, he could only work men half of the time, and all sorts of difficulties.

Q. How does the work proceed, just describe briefly? You put up a crane? A. Yes.

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Mr. LaMotte: This is all cross examination. Under the rule all he is entitled to show is the cost.

Q. What would be the reasonable cost as of December 7th, 1923, last December, of constructing the steel, per ton, assuming that there were 630 tons of steel? A. Here at 42nd Street?

Q. At 42nd Street, under the conditions as you have described them?

Mr. LaMotte: I object to the question upon the ground that he is not qualified and upon the ground that it is not proper direct examination.

The Court: Objection overruled.

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Exception taken by Mr. LaMotte.

Q. What would be the cost as of that date of erecting the structure? A. I would believe, without getting a plan of the thing, about $40 per ton.

Q. Per ton? A. About $40, yes.

Cross examination by Mr. LaMotte:

Q. What business are you in now, what is your business? A. Contractor, general contracting, steel erection, moving heavy machinery, heavy trucking.

Q. Isn't your business as a truckman, hauling?

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A. We do that.

Q. What is your firm's name? A. Harden Contracting Company.

Q. Isn't your business to haul steel? A. Yes, and paint it.

Q. And paint it? A. Yes, and erect it.

Q. What position do you hold in that company? A. President.

Q. Now, you bought this 42nd Street structure at an auction sale made by the City? A. Yes.

Q. And you took it down? A. Yes.

Q. Isn't it your business to buy wreckage and dispose of it? A. No.

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Q. What do you do with stuff like that? A. That was something unusual, that ran in the used steel line.

Q. Steel line? A. Yes, we have at least—

Q. Do you deal in second hand steel? A. No.

Q. What did you buy this for? A. Bought it and sold it right there.

Q. Didn't you ever erect anything in a street like 42nd Street? A. No.

Q. What you did was to tear down and not build up? A. We do build up, that is more our specialty than tearing down.

Q. Do you ever build up in any street in New

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York City? A. Take steel in to build into apartment houses and other buildings.

Q. Do you make a contract or do you do the work just of erecting? A. We do the work our selves with our own men.

Q. When was the last contract you entered into? A. About February.

Q. Who with? A. Frenier-Hanna, School 33.

Q. Where is that? A. At Creedmore, Queens.

Q. Did you make a contract for the erection of the steel? A. Yes, carted it and erected it and painted it and riveted it.

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Q. That is you hauled it from where to where? A. We would haul it from Metropolitan Avenue in Brooklyn out to the school. It is not started yet.

Q. Did you make a contract per ton? A. Per ton, yes.

Q. How much? A. About, as near as I can remember, $21.

Q. How much of that $21 was to haul it? A. $3.

Q. That made $18? A. Yes.

Q. How much for setting it up? A. 90 cents a ton to paint, and the balance for setting it up and riveting it and handling our tools on the job.

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Q. That is $17, about? A. About $18.

Q. $18 a ton? A. Yes.

Q. What kind of steel was that? A. Jones & Laughlin fabricated steel.

Q. When you said it would cost forty some dollars to erect this in 42nd Street, did you include the hauling? A. Yes.

Q. And the painting? A. Yes, one coat of paint.

Q. How much for the hauling? A. The hauling there would be about $1.50.

1318 Q. $1.50? A. Yes.

Q. And the paint? A. The paint would run along about a dollar.

Q. That is $2.50 from $40, which makes $37.50 for the cost of erection? A. Yes.

Q. What other items went into that? A. The great items going into that would be the rigging up to do it, and it would be such a short spur, not much tonnage.

Q. How much tonnage in this school house? A. About 1,250 tons.

1319 Q. How much tonnage here? A. Where?

Q. 42nd Street. A. 600 they say, 630 tons.

Q. And the cost of rigging up a job for the erection of a contract requiring 12,000 tons— A. 1,200 tons.

Q. (Continuing)—1,200 tons, and another one of 600 tons, makes up the difference between $17 a ton and $37.50? A. Yes, there would be different rigging.

Redirect examination by Mr. Nichols:

Q. The cost of installation of plant to handle it
1320 in such a short section as that was an element in the difference of cost? A. Yes, it would be an element.

Q. Are you familiar with the price of steel at that time? A. No.

Q. Just the price of erection? A. That is all my business is.

Cross examination by Mr. Page:

Q. Mr. Harden, before you purchased this structure with the obligation to remove it, you examined it very carefully, did you not? A. I did not, my men did, superintendent.

Q. Men in whom you had confidence? A. An engineer.

Q. When you came to take it down, you dug around each one of those columns and burned off the bolt, so when you extracted them the bases of those columns were intact? A. Yes.

Q. And as good as they ever were? A. Yes, column, base and all.

Q. So when you had the columns carried off, they represented units that had a value for use again, if anybody wished them, did they not? A. I judge they could, if they had a place to put them. 1322

Q. The things which you burned off were the cross girders, and those were useable again if anybody desired to erect an elevated railroad? A. Yes, I think they would be.

Q. You bought this structure with the obligation to remove, for how much money? A. I gave $255 for the structure.

Q. And then you sold this iron with the pillars intact, so far as the bases were concerned, and so far as the tops were concerned, so they could have been used again, could you not? A. Not so they could have been used again; we were to wreck the 1323 structure.

Q. These columns could be reinstated in another street and used again, could they not? A. No, the longitudinal girders there could not be used, we cut them off.

Q. I am speaking of the 42 vertical columns. A. To my best opinion they are as good today to use as any other time.

Q. These 42 columns are as good today as they ever have been, and you sold them? A. Yes.

Q. How much did you get for the whole of them? A. $6,000.

1324 Q. And how many tons were there in them, approximately? A. That I don't know, only to guess at.

Q. More than half the tonnage was in the columns, was it not? A. No, I don't think more than half the tonnage was in the columns, no.

The Court: Is this important?

Mr. Page: I merely wanted your Honor to see that you take a structure of this kind and it is as good as new and you can compare it with the value of what these others say a new structure would
1325 cost, and then you can find out what he was able to get for a structure of that kind.

Mr. Nichols: I object to that line of testimony. The whole thing is the enormous cost of doing work in 42nd Street crowded with traffic, interfering with the work.

The Court: Well, he has finished now.

FRANK D. ALLEN, called as a witness in behalf of the Claimants, being duly sworn, testified as follows:

Direct-examination by Mr. Nichols:

1326 Q. Mr. Allen, what is your business? A. I am an attorney and counselor at law.

Q. And you have been connected with the Manhattan Railway Company for the last thirty years? A. Just about the last 30 years.

Q. You have had charge of the documents and records of the company as managing clerk? A. Yes, to a certain extent I have.

Q. Have you in your custody here the conveyances of the easements of light, air and access to the Manhattan Railway Company on the 42nd Street spur line? A. I have.

Q. Let me have them, please. A. (Witness hands papers to Mr. Nichols.)

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Q. Those you obtained personally from the archives of the Manhattan Railway Company? A. Yes, sir.

Q. And these are the originals? A. Yes, sir.

Q. Were some of them executed pursuant to court orders, as the result of litigation? A. Some of them, yes.

Q. And some of them as a result of voluntary settlement? A. Yes, sir.

By Mr. LaMotte:

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Q. Are these instruments recorded? A. They are not, no, sir.

Q. Why weren't they recorded? A. It was not the practice in those days to record instruments where we got a conveyance and release with reference to a structure which was already in existence.

Q. Isn't it customary to put conveyances of real estate on record? A. I believe it is, yes, sir.

Mr. Nichols: We have put them on record wherever it was necessary to do so to protect our title.

Q. Are any of these on record? A. None of them.

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By Mr. Nichols:

Q. We have put these conveyances universally on record wherever we obtained them prior to the erection of the road? A. Yes, we have.

Q. Under the decision of the courts the existence of the structure itself was effective notice to all purchasers of the fact that we had obtained title to the easement? A. Yes, sir, that was decided in the Ward case.

Q. For that reason it was not necessary for us

1330 *Claimants' Witness—Frank D. Allen—Direct.*

to record them except prior to the erection? A. Yes, sir.

Q. Have we recorded them in all cases prior to erection? A. Where we have paid and taken title we have.

By Mr. LaMotte:

Q. Is there anything to indicate on these papers what property they relate to? A. Yes, sir, there is.

Q. In the description itself? A. Yes, sir.

Q. Have you anything there to state just what
1331 pieces of property these releases relate to? A. I think, Mr. LaMotte, there is a list on the bottom.

Q. See if you can find it? A. There is the list.

Mr. LaMotte: The question I asked the witness was whether any of them were recorded in 42nd Street.

The Witness: None, no, sir.

By Mr. Nichols:

Q. They were all obtained subsequent to the erection of the road? A. Subsequent to the erection of the road, yes, sir.

Mr. LaMotte: I object to the introduction of
1332 these instruments upon the ground that they are immaterial, irrelevant and incompetent, and upon the further special ground that there was nothing to release from further damages by reason of the maintenance of this structure in the street for railroad purposes.

Mr. Nichols: The form of the conveyance speaks for itself.

The Court: Let me see one.

By the Court:

Q. Are they all alike? A. Substantially, yes, sir.

The Court: Do these documents cover all the abutting property or only part?

Mr. Nichols: They cover all to which we acquired title either by settlement or by order of the Court. The balance of it we acquired by prescription.

The Court: So you claim easement of air, light and access in respect of all abutting property?

Mr. Nichols: Yes, we shall prove by this witness as to the balance not covered by these that we were in undisputed possession for over twenty years and got title by prescription. The title by 1334
prescription obtained under the Hindley decision is as broad as the boundaries of our grant, and is in fact a stronger title than the conveyance.

The Court: I will receive them.

Exception taken by Mr. LaMotte.

The Court: How shall we mark these?

The Witness: These are arranged in numerical order and there are two or three omissions, those being cases where we have got title by prescription, and one other case where we got title in condemnation proceedings.

Mr. Nichols: My friend interposed an objection 1335
prior to my offering them in evidence. I now offer them in evidence as Exhibits J-1 to J-16, inclusive.

Mr. LaMotte: I interpose my objection on the ground that they are entirely immaterial, irrelevant and incompetent, for the special reason that they are no more than releases from the abutting property owners of any further damages by reason of the maintenance of the elevated structure in the street, and they convey no easement of light, air and access which can be termed real estate or property.

Mr. LaMotte: Exception to City.

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The Court: I think that fully protects you.

Mr. Nichols: You have no objection to these documents, which are the originals on the ground of the authenticity of the signature?

The Court: You do not object on that ground?

Mr. LaMotte: No, I do not urge that ground. I assume they are, aren't they?

Mr. Nichols: Yes, I state they are the originals, and that they give us a title as of the date purported, either pursuant to court decision or settlement, for which the considerations named in the

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papers have been paid.

Mr. LaMotte: Is there any public record of those instruments anywhere?

The Court: I understand there is not.

The Witness: There is not.

Mr. Nichols: The decrees of the Court, of course, ordering the conveyance to be made—those were made very largely pursuant to the decrees of the Court.

By Mr. LaMotte:

Q. Can you state which are made pursuant to the decrees of court and which are made other-

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wise? A. I can from a list I have here.

The Court: Suppose we have them all marked as Exhibits first, and then we will have those enumerated, so we can refer to them by exhibit numbers.

(Admitted in evidence and marked Claimants' Exhibits J-1 to J-16, inclusive.)

The Witness: Exhibit J-1, Julia E. Ford and others, to the Interborough Rapid Transit Company and New York Elevated Railroad Company and Manhattan Railway Company.

Exhibit J-2, the grantor is the 42nd Street, Man-

hattanville and St. Nicholas Avenue Railway Company, and runs to the New York Elevated Railroad Company and the Manhattan.

Exhibit J-3 runs from the Manhattan Storage and Warehouse Company to the New York Elevated Railroad Company and the Manhattan.

Exhibit J-4, Harriet W. Goelet and others, runs to the Interborough, New York and the Manhattan.

Exhibit J-5, Lambeer, as executor and so forth, to the Manhattan and the New York.

Exhibit J-6, Alethea H. Weeks and others to the New York and Manhattan. 1340

Exhibit J-7, Thomas Buchanan Winthrop to the Manhattan.

Exhibit J-8, J. Frederic Kernochan, as substituted trustee and so forth, to the Manhattan.

Exhibit J-9, Harriet R. McKim to the Manhattan.

Exhibit J-10, James W. Pinchot, to the New York and Manhattan.

Exhibit J-11, Cooper Union for the Advancement of Science and Art, to the New York and Manhattan.

Exhibit J-12, Mary R. Goelet and others to the Interborough, New York and Manhattan. 1341

Exhibit J-13, James Hernon to the New York and Manhattan.

Exhibit J-14, Alice M. O'Brien and others to the New York and Manhattan.

Exhibit J-15, Margaret J. Westcott to the New York and Manhattan.

Exhibit J-16, George Rothmann to the New York and Manhattan.

The Court: The witness has just told the Court that there are four other pieces involved in this block. He has produced 16 conveyances or re-

leases here covering 16 of the 20. These other four are—

The Witness: Three of the four are properties as to which we have acquired prescriptive title and one other is a property as to which we acquired the easements in a condemnation proceeding.

By Mr. Nichols:

Q. Including the three to which we acquired title by prescription and the one by condemnation proceeding, which are not included in the conveyances that you have before you, you have covered
1343 the whole of the property abutting upon the elevated spur in 42nd Street? A. Yes.

Q. Removed as a result of this proceeding? A. Yes, sir.

Q. Are you familiar with the record and the litigation relating to the 42nd Street properties and the easements? A. I am.

Q. Has the elevated railway company been in continuous and hostile and uninterrupted occupation of the streets and the easements appurtenant to the properties other than those represented by
1344 the condemnation preceeding and the conveyances introduced in evidence? A. It has, yes, sir.

The Court: For how long a period?

Q. Since the construction of the railroad? A. Since the construction of the railroad in 1878, yes, sir.

Q. What was the last date on which any suit was brought, approximately, in 42nd Street? A. There was one action brought in 1904. We pleaded title by prescription, and the action has never been tried.

By the Court:

Q. Judgment of dismissal ever entered? A. I beg pardon?

Q. What became of the suit? A. It has disappeared into the thin air, never has been prosecuted.

Q. Then let us get it off the calendar. A. It is not on the calendar and has not been for many years; it never was put on the calendar, as a matter of fact.

Q. Who was the plaintiff? A. Almy Goelet Gallatin, property 110 to 116 East 42nd Street. 1346

By Mr. Nichols:

Q. Prior to the date of the bringing of that action had the elevated railroad been in undisputed and continuous hostile occupation of the street? A. It had.

Q. And no previous action had been brought in respect to that property? A. No previous action.

Q. So we have acquired prescriptive title to that property? A. We have.

Q. And for twenty years nothing has been done in the suit? A. Nothing been done for twenty years. 1347

By Mr. LaMotte:

Q. Mr. Allen, how many properties—

Mr. Nichols: Is this cross examination?

Mr. LaMotte: Are you through?

Mr. Nichols: I simply wanted to prove we had acquired prescriptive title to all the frontages not covered by the conveyances of the property or where we acquired the easement by condemnation.

The Witness: We have, yes, sir.

Q. In accordance with the rules laid down by the Court of Appeals in the Hindley case? A. Yes, sir.

By the Court:

Q. Are you prepared to give us the properties involved—can you give us those properties where you acquired title by prescription? A. I can, yes, sir.

Q. Can you give it to us by the name of the owner at the time? A. Yes, sir. The first is 110 to 116 East 42nd Street, Almy Goelet Gallatin, 100 feet front on 42nd Street. Then there is the property at the northeast corner of Park Avenue and 42nd Street, owned by the New York Central Railroad Company. The next is property described as 131 to 133 East 42nd Street, northwest corner of 42nd Street and Lexington Avenue, 125 feet front, owned by the New York Society for Cripples.

Q. For crippled children or for cripples? A. It is "Cripples" here. I am not sure that is the correct corporate name.

By Mr. LaMotte:

Q. Is that all by prescription? A. Yes, sir.

By the Court:

Q. Now, the one by condemnation? A. The property as to which title was acquired by condemnation was No. 148 to 154 East 42nd Street. The owner was James Renwick. We acquired title February 18th, 1889. I believe that covers the entire frontage on both sides of the way.

By Mr. Nichols:

Q. The date of acquisition by prescription would be in twenty years, as the Court of Appeals in the Hindley case held, so beginning with the date of construction of the road the title there would

accrue in 1898 by prescription? A. The title accrued there in August, 1898.

The Court: I suppose there is no instrument or decree of the Court covering those so-called titles by prescription, is there?

Mr. Nichols: No, we simply have to prove, as we have done here very briefly that there has been no suit brought or any dispute and continued possession.

The Court: You have a record of the condemnation, have you not?

Mr. Nichols: We have records of the condem- 1352
nation.

The Court: That would show exactly what you got in that. I think you ought to have that here.

The Witness: I started getting that and the papers are so old that we have had difficulty in locating the papers, but we are after them now.

Mr. Nichols: That is a matter of court record, there should be no difficulty. I am sorry not to have it here, but we found it hard to get the papers.

Q. In respect of the properties to which title has been acquired by prescription, there has been no 1353
recognition of title in abutting owners in any way, by negotiation or otherwise? A. No, sir, not that I know of.

Mr. LaMotte: Mr. Allen, may I look at those exhibits?

The Witness: Yes.

The Court: In each one of these instruments you claim the word "conveyance" is used?

Mr. Nichols: Yes.

Cross examination by Mr. LaMotte:

Q. There is a consideration mentioned in each one of these releases? A. Yes, sir.

1354 *Claimants' Witness—Frank D. Allen—Cross.*

Q. Does that consideration include what is known as past damages covering the period from the time of the erection of the structure up to the period that the releases were made? A. No, sir.

Q. This sum that is mentioned in here as the consideration, as I understand it then, which the company paid to these abutting owners for the privilege of continuing their structure in the future from that date, from the date of payment? A. That is one of the rights we got, yes, sir.

Q. But the sum has no relation to what was
1355 paid to these owners for damages which accrued up to the time the suit was brought? A. No, sir.

Q. Is that true in all these cases? A. There may be some exceptions, but they are very rare exceptions.

Q. How do you know that is so? A. I am persuaded that is true in cases where there have been judgments entered, because for the most part in such cases the consideration recited in the instrument was what we call fee damage and was so awarded in the judgment.

By the Court:

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Q. How did you pay damages up until the suit was brought, how was that covered? A. That was covered frequently when payments were made and adjusted. It was frequently done by separate check; sometimes the check that was delivered covered the entire consideration for the conveyance itself and the past damages and costs.

Q. But there were two separate elements? A. Two separate elements, yes, sir.

By Mr. LaMotte:

Q. Now, are you in a position to testify defi-

1357

nitely, Mr. Allen, whether in any of these releases that consideration does not include past damages, are you in a position to know positively that that is so? A. I would not say so, no, sir, because I did not conduct the transactions.

Q. Do you know which instruments so purported to include it and which purported to exclude it? A. No, sir, but I qualify by stating this, that in the largest percentage of the cases that have gone through, and they have gone through by the thousands, the consideration recited in the instrument covers the so-called fee damage.

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Q. You do not know whether that is so in these instruments? A. I think almost without exception that is true.

Q. You think it is? A. I will say it is.

By the Court:

Q. That is, cover the fee damages? A. Yes, sir.

By Mr. LaMotte:

Q. Which one covers both then? A. I won't say that any of them cover both.

Q. Take the condemnation proceeding, how were the past damages settled in that? A. Where there was a period of past damages, they were settled outside of the payment made in the proceeding as an award.

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Q. There was only one condemnation case on 42nd Street? A. Only one where we prosecuted to a conclusion and got title by that method.

Q. And of course that will tell what was paid there? A. Exactly.

Q. Where you got these rights by prescription, were there any past damages paid at all? A. No, sir.

1360

Q. Do you know about what percentage of the street frontage on both sides of the portion of 42nd Street in which this structure is situated were releases obtained for—what percentage did you get by prescription and what did you get by these papers? A. Well, the percentage, I haven't got it accurately in mind, but the percentage is small as compared with the frontage as to which we got title by conveyances.

Q. Did you attend the hearings before the Public Service Comimssion on the question of the

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necessity for the existence of this spur? A. I did not, no, sir.

Q. Do you know whether it was not testified before that commission that about half of these easements were paid for and about half acquired by prescription? A. I know nothing about it, sir.

By the Court:

Q. You can get us the exact figures, can you not? A. Oh, yes, it is a matter of computation.

By Mr. LaMotte:

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Q. Have you totaled up the figures? A. Personally I have not, no, sir.

Q. The dates of these instruments are at different times? A. Yes, sir.

Q. They vary over a period of how many years? A. They vary over a period of I should say probably ten or twelve years.

By the Court:

Q. Beginning when? A. There are some instruments that were executed back in the latter eighties.

Q. What is the earliest one, can you tell us? A. Here is one of May 8th, 1890.

The Court: Unless you deem it important at this time, Mr. LaMotte, we will give him an opportunity to look it up.

Mr. LaMotte: What I want to bring out is this—

By Mr. LaMotte:

Q. It is your understanding then that this settlement which you made with these different people was as of the date of this instrument in each case? A. Practically so, yes, sometimes a short interval elapsed between the date of payment and the date of the instrument. 1364

Q. The amount of money mentioned in each of these papers, as you understand it, was payment for the right of the railroad to occupy the street from that date down to the end of the franchise, is that right? A. That is right, with the exception in some cases, if you will permit me, where a judgment was entered the date was fixed in the judgment.

Q. Exactly. If not fixed— A. And the instrument possibly was executed several years after that date because of appeals that were taken.

Q. That is, the amount of money which the company paid the owners at that time was intended to be compensation for the occupancy of the street by the structure from the date for all time in the future? A. We got that right, yes, sir, that is what we got. 1365

Q. So far as past damages were concerned, your understanding is that was settled in another payment or not settled at all? A. It was represented in another sum, the payment however may have been coincident with the payment for the easement or fee damage.

Mr. LaMotte: Mr. Nichols has means of ascer-

1366 taining where these condemnation proceedings are. I wish he would put the proceedings in evidence.

Mr. Nichols: We have said we would do it. We have been delayed by the difficulty of getting the papers.

The Court: I understand the witness says he has attempted to locate it but didn't have time.

Mr. Nichols: As I understand it, there is no question about our title to these easements, but there is a question raised by the Corporation Counsel—

1367 The Court: As to the nature of your title.

Mr. Nichols: Yes, the nature of the title. That will save us a great deal of proof.

The Court: Mr. LaMotte, there is no question but what these instruments were executed and by virtue of these instruments the claimant secured something; what they secured is the question in dispute.

Mr. LaMotte: You mean as to the authenticity of the instrument?

The Court:

Mr. LaMotte: [illegible] speak for themselves, whatever they are. I do not suppose there is any question, I don't know. The only way I have of ascertaining is by getting the people. They are not on record.

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Mr. Page: Wouldn't the easiest way be if Mr. Allen could, under Mr. Nichols' direction and that of the other firm, tabulate the names of the grantors and grantees, and the date of payment, and whether for past damages or prospective, then you have it all on one sheet.

Mr. LaMotte: They are not matters of public record, I have no way of checking those up, except by getting the people who executed them.

1369

The Court: I am quite sure Mr. Nichols will furnish you with any information.

Mr. Nichols: We will give you any information we have.

Mr. LaMotte: Take them subject to verification, if necessary.

The Court: Yes, they are not raising any question.

Mr. Nichols: That will save us a great deal of time.

The Court: That is what we want to do.

Recess until 2 P. M. 1370

After Recess.

Mr. LaMotte: Before proceeding with the City's testimony as to the cost of reproduction of this structure, I wish to make a motion. I move to strike out of the record the testimony of George W. Burpee, Otis Hovey and William F. Harden, relative to the cost of reproducing the structure in 42nd Street, upon the ground that no foundation has been laid for testimony of that kind, no testimony whatever having been offered as to whether that is a productive railroad, and under the Cape Cod Canal case, until it is shown that a reasonably prudent man would expend the money in reproducing that structure, that line of evidence is not admissible. 1371

The Court (to Mr. Nichols): I understand that the claimant intends to offer evidence to the effect that it is a paying road and you rested with this line of testimony reserving the right to introduce that evidence?

1372 Mr. Nichols: Yes, I do not agree that the Cape Cod case is applicable. It is not necessary for us to prove that the railroad is paying any certain amount or even anything at all. This is a convenience, just as the Grand Central station adjoining it is, with its great façade and enormous expenditure of ornamentation that is put there. To have to prove that each element of an elevated structure is a producing and paying proposition, would be absurd.

The Court: For the time I will reserve decision upon it.

1373 Mr. LaMotte: I except.

The Court: Haven't you proof now to offer as to the earning power?

Mr. Nichols: I would rather clear up the question of structural value first.

Mr. LaMotte: The testimony which I propose to offer as to the cost of reproducing this spur is offered in the nature of rebuttal, without prejudice to the City's position that testimony of that kind is not admissible.

1374 JOHN C. BRACKENRIDGE, called as a witness in behalf of the City, being duly sworn, testified as follows:

Direct examination by Mr. LaMotte:

Q. Mr. Brackenridge, where do you reside? A. Kew Gardens, Long Island, in the City of New York.

The Court: What is the City called—the respondent?

Mr. LaMotte: No, we are the petitioner.

Q. How long have you resided in the [redacted] of New York? A. About 40 years.

Q. What is your business? A. I am a consulting engineer.

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Q. Have you an office? A. I have an office at 95 Liberty Street.

Q. How long have you been a consulting engineer? A. Since 1907.

Q. And prior to that time, what were you? A. I was Chief Engineer of the Brooklyn Rapid Transit Company.

Q. And prior to that, were you superintendent of construction at one time? A. Yes.

Q. Will you just tell the Court what experience you have had in that line, that is, railroad engineering from the time you started in, up to the present time? A. In 1885 to 1889 as Assistant Engineer and later Superintendent of Construction made surveys for the Brooklyn Elevated Railroad, located and constructed the foundations and stations, erected the structure and laid the tracks and deck, being engaged in this work from 1885 to 1889. This original work was constructed for steam locomotive operation. In 1889, I was engineer in charge of the construction of all subway ducts from 59th Street to the Harlem River.

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From 1890 to 1892, in charge of two sections of the Brooklyn Aqueduct extension. In 1892 to 1893, Principal Assistant Engineer for the East River Bridge Company, having charge of surveys, triangulation and location of the Manhattan and Williamsburg Bridges over the East River. The interests that controlled the East River Bridge Company were the same as those in the Brooklyn Elevated Railroad Company. In the early part of 1894, I went with the Long Island Traction Company, which afterwards became the Brooklyn Rapid Transit Company, as Chief Engineer of construction, and some time afterwards became the Chief Engineer and General Manager of the Brook-

1377

lyn Rapid Transit System, remaining as such until 1904. During this time there were taken into the B. R. T. System the Brooklyn Union Elevated Railroad, Kings County Elevated Railroad, and Sea View Railroad—comprising all the elevated railroads of Brooklyn, and also the following steam surface railroads: Prospect Park and Coney Island Railroad; Brooklyn, Bath and West End Railroad; Brooklyn & Brighton Beach Railroad; New York and Sea Beach Railroad; Brooklyn Bridge Railroad. As these various railroads were absorbed
1379 by the B. R. T., they were reconstructed, extended and electrified, and sub-stations, power houses, shops and barns were built under my direction as General Manager and Chief Engineer. I represented all the surface lines in securing the right to operate trolley cars over the Brooklyn Bridge. Adopted and perfected the Multiple Unit Control System for electric trains on the Brooklyn Elevated Railroad. While General Manager and Chief Engineer of the B. R. T. I was appointed by Mayor Low on the Brooklyn Grade Crossing Commission in recognition of the services rendered by me in preparing and securing the pas-
1380 sage of the Legislative Act providing for the removal of grade crossings on the Brighton Beach Railroad, and remained in active direction of engineering work on that commission until appointed Commissioner of Public Works of the Borough of Brooklyn, in which office I had final approval of the plans of the Grade Crossing Commission. Have been appointed by municipalities, Courts and corporations on many commissions and boards of experts, etc., dealing with railroad condemnation proceedings, valuations, rate cases, traffic problems, and other general engineering subjects.

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Since 1906, I have been in private practice as a Consulting Engineer, the most important work being: New York Central & Hudson River Railroad Company, Consulting Engineer (Electrical Zone).

City of New York—Qualified as expert, and appeared as Consulting Engineer to Corporation Counsel on Franchise Tax Litigation, appraisal of railroad properties, affecting valuations, depreciation and operation of the Metropolitan Street Railroad, Third Avenue Railroad, Brooklyn Rapid Transit System, New York Railways Company, the Belt Line Company, the Dry Dock Company, the

1382

Mid-Crosstown Company, and the electrical subway properties of the Empire City Subway Company, Ltd., and the Consolidated Telegraph and Electrical Subway Company.

In charge of engineering, construction and operation of several railroads. Appraisal of the following properties for rate or tax purposes:

Trenton & Mercer County Traction Corporation; New Jersey and Pennsylvania Traction Company; and the Public Service Railway Company of Trenton, New Jersey. Public Service Railway Company, Public Service Electric Company, Public Service

1383

Gas Company, New York Telephone Company, Hackensack Water Co., Western Union Telegraph Company, Postal Telegraph Company; American District Telegraph Company of Hoboken, New Jersey. Public Service Railway Company, Public Service Electric Company and Public Service Gas Company of Jersey City, all second-class steam railroad property in Jersey City, consisting of piers, docks, grain elevators, buildings, track, machinery, etc. New York Central Railroad and the West Shore Railroad within the City of Little Falls, N. Y., for the City of Little Falls. International Railway Company's property in this country and Canada.

1384 *City's Wit.—J. C. Brackenridge—Preliminary Cross.*

Checking new inventory of International Railway Company.

Chairman of the Appraisal Commission of New York State Railways Service-At-Cost Contract in making valuation of the Rochester Lines.

Expert on Marion Tube Case for Jersey City against the Pennsylvania Railroad, for the establishment of a station at West Side Avenue, Jersey City, on the Pennsylvania Railroad. Special investigation and report on the explosion at Black Tom for the City of Jersey City. Traffic expert for
1385 the City of Buffalo, New York, during the war. Expert for the Philadelphia & West Chester Traction Company and the Philadelphia & Western Railway Company of Philadelphia on the operation of elevated railroad. Represented Jersey City and Hoboken in their 1920 rate case against the Hudson & Manhattan Railroad Company. Elimination of Bayonia Avenue Grade Crossing of the Erie Railroad in Jersey City. Expert for Village of Ridgefield Park, New Jersey, for the construction of a new station by the Erie and West Shore Railroads. Expert for District Attorney of Kings County in
1386 investigation of elevated wreck on the B. M. T. at Atlantic and Flatbush Avenues. Expert for Hudson County in the adjustment of its lighting rates with the Public Service Electric Company. At present, Chairman of Engineers Committee of the Queensboro Rapid Transit Committee.

Cross examination (preliminary) by Mr. Nichols:

Q. On the subject of your qualifications, you have testified to miscellaneous experience and to being General Manager of the B. R. T. System at a certain time and of operating the street surface railroads, and of your relation to a telephone com-

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pany and other matters of a very general character—

The Court: I don't hear you, Mr. Nichols.

Q. You have testified to a very general experience as Consulting Engineer, embracing a very wide variety, which you have read at some length? A. Yes.

Q. Have you ever been engaged in actual steel construction? A. In the fabrication of steel?

Q. Yes. A. Yes.

Q. In what connection? A. As Chief Engineer and General Manager of the B. R. T., we made many alterations to the structure.

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Q. That has been confined to alterations in the structure but have you ever taken a contract, or been engaged in a contract for new construction yourself? A. My position there was similar to that. We did a lot of our own work; we erected our own steel for our own construction, and laid the track, and did the work with company forces, which were directly under my supervision.

Q. But you have not undertaken the original construction of a railway? Your experience has not been of that character; it has been the alteration, or management of railway properties of various characters, after they have been going concerns? A. No, I was the Superintendent of Construction. I had it from the ground up. I made the original surveys, located the foundations, I had charge of building the foundations, I had charge of erecting the steel and putting the deck on the structure, and all the stations and station platforms, and everything that goes to make up an elevated railroad. We did sublet contracts for the foundations, and in some instances, contracts for the erection, and always the contract for the steel with the steel mills. I never had any experi-

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1390 ence in a steel mill, but outside of that I have had all the experience there is to have with an elevated railroad.

Q. You mean you have never been connected with the fabrication of the steel? A. Not in a steel mill, but we have done a lot of fabrication of our own, on the road, re-enforcing and building up and splicing out girders, and all that sort of thing, which is the same character of work.

Q. I don't want to interrupt you, but you are speaking of work that had been already put up
1391 and just what was put on the work, while I am speaking of original construction? A. That is original construction.

Q. What was? A. Hudson Avenue, Broadway, Myrtle, Fifth Avenue, part of Lexington Avenue, upper Fulton Street, Crescent Street.

By Mr. LaMotte:

Q. How many miles in length? A. Approximately 60 miles of track of elevated structure. I had the supervision and the erecting and the laying of it, as assistant engineer or superintendent of construction, or general manager and chief en-
1392 gineer of the B. R. T.

By Mr. Nichols:

Q. In those various capacities, you are referring to the original construction of the elevated railroads in Brooklyn? A. The original and subsequent additions to the original.

Q. The original railroads were constructed in the year 1878 or 1879? A. Just a little piece, by the Brough Syndicate.

Q. And the construction of the main structures was completed in 1884 or 1886 or something of

that kind? A. The Brooklyn Elevated Railroad Company took over the Brough Railroad, and started active work about 1884 and 1885 and 1886 and 7 and 8.

Q. Beginning in 1884, and finishing in 1886 or 1887? A. In 1889.

Q. And some of it in 1889? That is the work you are referring to as having been engaged in original construction? A. That is part of it.

Q. That was the last? A. No, that was the first of it. There is a good deal more than that later on with the B. R. T. 1394

Q. Just when? A. Well, at 36th Street and Fifth Avenue, and at Crescent Street and Jamaica Avenue.

Q. What was that—that was station construction, was it not? A. And Franklin Avenue—not Franklin Avenue, but on the private roadway from Fulton Street, just between Franklin and the next street west of it, I don't remember what it is now.

Q. When was that, and what was it? A. That was up to 1904.

Q. That was the last, and what was the work? You have not told us. A. Elevated railroad work. 1395

Q. You mean station construction? A. Station and track, and maintenance and foundations.

Q. I understand those structures have been added to in the way of stations and tracks, but I am asking about the last original construction in the streets. A. I should say it was somewhere in the neighborhood of 1903 and 1904.

Q. And how extensive a section of new railroad was built and where, in 1903 or 1904? A. That I don't remember; Fifth Avenue and 36th Street, the work was going on from about that time, I think.

1496 Q. But you don't remember? A. And also 65th Street. I forgot to mention 65th Street and Third Avenue. Numbers of pieces of work of that character, going on throughout the system.

The Court: I think he has qualified; you may proceed.

Direct examination (continued) by Mr. LaMotte:

Q. Mr. Brackenridge, did you make an examination of the structure which is located within the condemnation area, as shown on the City's Dam-
1497 age Map? A. Yes, sir.

Q. And did you make that examination for the purpose of estimating its present structural value? A. Yes.

Q. When did you examine it? A. I started in on October 10th, and I have worked most of the time since then.

Q. Did you measure it up in detail? A. Yes.

Q. The station at Park Avenue and the railroad structure itself? A. Yes.

Q. And all the appurtenances connected with the structure? A. Yes.

1498 Q. Will you describe the structure, its method of construction? A. The structure is what is known as a single lattice girder type of construction, with transverse girders set on spread top columns in some instances, and in some instances straight columns. It is a very old type of construction, put up in 1878.

Q. And it is made of wrought iron? A. It is made of wrought iron.

Q. In estimating the cost of reproducing that structure, have you figured it in steel? A. We figured it in iron and added two per cent. to the weights for iron, to bring it up to the steel weight for the same sections.

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Q. Did you estimate it in the method, the same method of construction that you now find it? A. Yes.

Q. Are you prepared to state what in your opinion it would cost to reproduce the structure within the condemnation area, including the elevated station, stairways and so forth on or about December 7th, 1923? A. Yes.

Q. What, in your opinion, would it cost to reproduce that new, at that time? A. $181,570.

Q. Have you made a careful examination of that structure for the purpose of estimating the cost of the proper depreciation that took place on it, by reason of its use and its age? A. Yes, sir.

1400

Q. Have you done so? A. Yes, sir.

Q. What depreciation would you consider would be a fair amount to deduct from the cost of reproduction? A. $61,069.

Q. In your opinion what then would be the fair and reasonable present structural value of that spur, or its value in December, 1923? A. $120,438.

Q. And in that estimate have you included architect's fees—all expenses in connection with it, which you think should go in to make up its cost? A. Yes.

1401

Q. Now, have you prepared a detailed statement showing the various items which go to make up your total estimate of its present value? A. Yes.

Mr. LaMotte: I offer this in evidence.

Mr. Nichols: This, I understand, totals the total amount which he has testified to?

Mr. LaMotte: Yes.

Mr. Nichols: Have you got an extra copy of this?

The Court: I think you ought to have a copy for Mr. Nichols, and a copy for the Court.

1402

(Admitted in evidence and marked City's Exhibit 22.)

Mr. Nichols: I don't wish to object to anything which will be of any aid to the Court, but I understand this merely totals the items.

The Court: In one other similar case that I tried, I found it of considerable value to have before the Court for the purpose of seeing how these various items were made up, and I think you will find it of value for your own expert to look over. It is simply a tabulation of the figures upon which

1403 he makes up his total.

Mr. Nichols: We had one, which we gave to the City at the institution of the trial, for the purpose of fairness, and in trying to eliminate any possible differences, and with what we have brought out this morning, that has been modified, in order to eliminate or endeavor to reach an agreement on everything that is possible, and I would like very much the privilege of putting in our revised estimate, so that it would correspond with this, and in such form that the Court can check our items as against these items.

1404 Mr. LaMotte: When I cross examined his witness, I did not have the advantage of these detailed estimates. I am perfectly willing you should do that, provided I should have an opportunity to cross examine your witnesses.

The Court: If you wish, you may have an opportunity for further cross examination if you find it necessary. Is it in shape now to offer it?

Mr. Nichols: I think it can be gotten in shape; we can get it in shape by tomorrow morning, your Honor.

Q. Mr. Brackenridge, your estimate includes the stairway at Park Avenue, does it not? A. Yes, sir.

1405

Q. Have you made a separate item of the cost of the stairway at Park Avenue and 42nd Street?

Mr. LaMotte: Your Honor will recall that a question arose as to whether the stairway at Park Avenue and also as to whether the columns were properly located in the street. An injunction suit was brought by the railroad to restrain the City from removing the columns, and the City filed an answer to that suit, and the issue was referred to your Honor, and the understanding was that you would decide that upon the testimony taken in this case.

1406

Mr. Nichols: No, the City brought the injunction; we brought no injunction.

Mr. LaMotte: We served notice on you and you brought the suit.

Mr. Nichols: The City took the original action; technically, that is true.

Q. Have you got a separate estimate? A. I have got one somewhere.

Q. Read that? A. Estimated cost to reproduce as of November 1st, 1923, stairway and canopy for same at Park Avenue and 42nd Street—

Q. Just give the total; you need not read the items? A. $2,943.27.

1407

Q. Have you made up a detailed estimate showing how you arrive at that total? A. Yes, sir.

Q. Is this it (exhibiting paper)? A. Yes.

Mr. LaMotte: I offer this in evidence.

(Admitted in evidence and marked City's Exhibit 23.)

Q. The estimate which you have put in as to the total structural value of the entire spur, has not taken into consideration whether or not the columns are properly located within the street. You assumed that they have been? A. I assumed that they have been, yes.

1408 Q. Have you made an estimate of the cost of moving those columns over to the curb? A. No, sir.

Q. You can do that, some time? A. I can do that, yes. You mean moving them over to the curb at Park Avenue?

Q. All the way down. A. No, I did not do that; I did one girder at Third Avenue.

The Court: Mr. LaMotte, let me understand you: You have given a figure of $2,943.27 as the estimate of the cost of the stairway and canopy

1409 at Park Avenue?

Mr. LaMotte: Yes.

The Court: Is that separate from this other item as to which you are making inquiry?

Mr. LaMotte: The original testimony of Mr. Brackenridge includes everything within the condemnation area. I have made a distinct estimate of the stairway, so that if the City's contention that that is wrongfully there be sustained, and your Honor holds with me that that should not be allowable, you will have a separate estimate of this. I think that is brought out in the record.

1410 The Court: Where do you claim the stairway ought to be? On the curb line of the street? It is on the curb now, isn't it?

Mr. LaMotte: It is on the sidewalk. According to the plans which were approved by the Common Council and the City's Commission, it was at a different location.

The Court: Then in addition to that you are now raising the question as to whether or not the columns themselves are properly located?

Mr. LaMotte: Yes, the Borough President raised the contention that the columns should not be out 8 or 10 feet from the curb line of the street. I

1411

am simply raising this for the purpose of your being able to dispose of that suit. Of course, the City's contention is that the stairway is not rightfully there, and that we do not have to pay for it, and that the columns should be removed to the curb line of the street, and that whatever it costs should be deducted from the structural value of the structure. Mr. Brackenridge will estimate that cost at another time. This total estimate includes everything. If these items are disallowed, then this amount is deducted from the amount of the whole.

1412

Cross examination by Mr. Nichols:

Q. Your estimate, to which you have just testified, relates to the total structure within the condemnation area? A. Yes.

Q. And the stairway at Park Avenue, to which you have given a separate value, is to be deducted from that total? A. Yes.

Q. In the event that the Court decides a legal question one way or the other? A. Yes.

Q. So that your figures relate to the same subject-matter of valuation as those to which the testimony of the claimant relates? A. Yes.

1413

Q. And the differences are first in the matter of depreciation, and the cost of the steel work, and of general overheads. Outside of those, are you substantially in accord? I want to bring down the issue to the vital point of difference. A. We are substantially in accord on the number of tons of structural iron—down to about one-third of one per cent.

Q. You have 628 tons and something, and the Manhattan— A. They have 629, and we have 628.

Q. What is the basis of that difference, small as

1414 it is? I thought you had reached a complete agreement?

The Court: Cannot we proceed upon the theory that they do agree?

Mr. Nichols: I wish we could safely.

The Court: What is the difference between your figures?

The Witness: 72/100 of a ton.

The Court: Let us assume it at 630 tons, and proceed upon that basis.

Mr. Nichols: 630 tons.

1415 Q. What figure did you use in the value of the steel entering into this structure, per ton? A. I used a figure which I took from the records of the Transit Commission on the bids received on November 2, 1923, for Route 52, Sections 1 and 2, in Flushing, of $99.80, and I added $5.60 to that, to bring it—on account of some of that structure out there being plate girder, and this in 42nd Street is lattice girder; I allowed $5.60 a ton addition to the $99.80, for the lattice type of construction.

Q. Then your difference, using the bids for section Nos. 1 and 2 of the Flushing route, at $99.80,

1416 was the difference between the solid girder and the lattice girder? A. Yes.

The Court: What is that basic figure you use there?

Mr. Nichols: $99.80 a ton for solid girders.

Mr. LaMotte: That is put up—constructed.

Q. Now that, Mr. Brackenridge, is an element of additional cost due to the different nature of the material of the members composing the structure, one being lattice girder and the other solid, the difference of $5.60? A. In favor of the lattice girder.

Q. The lattice girder costs more, $5.60. On what do you base that figure of $5.60 as the difference in cost between the plate girder used on the Flushing extension contract, and the lattice girders which are in the 42nd Street spur? Why did you take that figure of $5.60? A. That was also a bid received by the Transit Commission where they have bids on plate girder and lattice girder construction, and there was $5.60 difference between the lattice and the plate girder.

Q. That was the work done on the Culver route in 1918? A. 1918. 1418

Q. On the Culver route, there was a difference of $5.60 between the two types of girder? A. Yes.

Q. Was the Culver route a part of the main route to Coney Island? A. Yes.

Q. On that are operated what kind of cars—what kind of cars are operated on that? A. Subway cars.

Q. Subway cars are steel cars, aren't they? A. Yes.

Q. What is the difference between the weight of the subway cars operated on that Culver route to Coney Island, where the lattice girders were used, and the cars that were operated on the spur? 1419
A. The elevated cars that were operated on the Culver route would be the same weight, and the steel subway cars would be—I don't know just exactly what they do weigh, but probably 20 per cent. more.

Q. The steel cars weigh 20 per cent. more? A. Roughly.

Q. The cars used on the shuttle at 42nd Street are the wooden, light cars, aren't they? A. They weigh about 62,000 pounds.

Q. And wouldn't the steel subway cars weigh

1420 approximately twice as much? A. About 80,000, I think, but I am not sure.

Q. And they run eight-car trains to Coney Island on that route, that Culver route? A. I think, seven.

Q. And what speeds? A. Well, the maximum speed that they are able to attain is 50 miles an hour, but they make a schedule speed of about 25 miles an hour. That includes the stops.

Q. And those subway cars of the B. R. T. system are the heaviest cars that are operated on any
1421 traction line in the city? A. Yes, seven of those cars are equal to about ten of the ordinary subway cars in capacity.

Q. And corresponding in weight? A. Yes.

Q. You were contemplating on the Culver route, a heavy construction necessary to take care of the operation of cars of that modern character, were you not? A. Yes, but you can make just as heavy construction on lattice girders as you can on plate girders.

Q. And that is the kind of lattice girder you were calculating on for that construction in 1918,
1422 for the Culver route, big, heavy girders to carry that heavy operation? A. It is also on account of the light and air; that is the reason the lattice girder was used in the elevated structure.

Q. I understand that, but I want you to answer this question, whether it was not a big, heavy lattice girder,—I am asking about the size? A. I don't know just what they weighed; they were probably no heavier than they are at Flushing.

Q. But Flushing is a through route? A. It depends upon the span, how heavy the girder is.

Q. But the span there was probably the standard span, it was not a short span? A. I don't know

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where the lattice girders were used; it might have been a short span, or might have been a long one.

Q. That construction on the Culver route was per foot—the weight per foot was about 50 per cent. in excess of the weight per foot on the spur in 42nd Street, wasn't it? A. It would be heavier.

Q. Now, in using heavy members, big girders, whether lattice or solid, the cost of construction is correspondingly diminished, and the cost of fabrication is correspondingly diminished, because in heavy construction, you have correspondingly fewer members per ton, is that true? A. It is not correspondingly reduced.

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The Court: Is it reduced to some extent?

The Witness: It is decreased to some extent on the erection, to have heavier girders, than it is light ones, but not to any material extent; in the little difference you have between 42nd Street, and the new type of construction, there would not be any material difference.

The Court: What is the price per ton of steel given by the witness—

Mr. Nichols: $82 was the amount at which the witness quoted the steel on this Flushing route.

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The Court: What did your experts say the steel would cost?

Mr. LaMotte: My recollection is that he had two prices; I think Mr. Burpee's was $120.

Mr. Nichols: That is laid down, constructed; I am talking about the cost of the steel.

Mr. LaMotte: The Court wants to compare Mr. Brackenridge's estimate with the estimate you claim, as I understand it. This morning they put in $108 and $40; that is $148.

Mr. Nichols: The testimony was $120, erected. The City's testimony is $103 or $105—at any rate,

1426 it is $99.80, plus 5.60. Now, the only difference in the items of cost of the erected steel and the finished structure is that item of $5.60 due to one being lattice girder and the other solid.

Q. Assuming that the girders on the 42nd Street structure run from five to six tons a member, a girder, and those on the Culver route, to take care of the heavy operation, ran about nine or ten tons, I ask you if the cost of making 50 or 60 per cent. more members, fabricating the smaller type, which would require more per ton, wouldn't that difference in cost be material? A. No, not material.

1427. Q. Suppose the ratio were two to one, and you had to make two of the smaller girders to one of the big ones, all the parts of the girder being the same, but one big one weighing ten tons being equal to small ones of five tons, wouldn't it cost a very considerably greater amount to make these small five-ton girders for a railroad, than those comparatively large members? A. No, the big girder might cost a great deal more than these *small girders, on account of the difference in facilities* for handling them and fabricating them in the shop. The weight might make it cost a good deal

1428 more than two smaller girders that they had the facilities to handle.

Q. Isn't it a fact that with shop facilities, there is no trouble in handling a girder of ten tons? A. There is more trouble handling one of ten tons than there is in handling one of five. It takes twice the mechanical horse power to handle a girder of ten tons.

Q. And this girder is a fabricated article, it is built up by riveting together a large number of members, forming what the very term implies, a lattice structure. The solid girder is one single piece of steel. Now, in fabricating the lattice

girder, you say it cost $5.60 per ton more, because there is more work to be done, but you say that it takes two lattice girders to make these small type used on 42nd Street, to equal the one used on this through route at Flushing Avenue, built to take care of the modern steel car, in express operation, but you say that it does not cost materially more to do twice the amount of fabrication? A. There is so many different conditions on 42nd Street. You have a low structure, that it is perfectly feasible to erect that structure from the street—

Q. (Interrupting.) I am talking now just as to 1430
the cost of the steel; confine yourself to that, please. I am talking about the cost of the steel member? A. My opinion is that $5.60 more per ton for lattice girder is a very liberal allowance.

Q. You told us you took those figures from the reports of the Transit Commission, and accepted that difference of $5.60 as covering the whole situation? A. Yes.

Q. You don't know about the difference in cost of fabricating a larger number of small girders, such light girders as they have in 42nd Street, and the big ones that they have used down there at 1431
the Culver? A. It all depends on the amount; you pay a certain ton price for your billets, the shapes the girder is rolled out of; the next item of cost is labor in handling and working those girders. That cost is very largely made up of either punching or drilling or reaming rivet holes, and filling those holes with rivets. Certain types of plate girders have more rivets in them than a lattice girder, and consequently they have more work. If a plate girder has a stiffener on it, which is frequently the case, every four or five or six feet,

1432 and a solid row of rivets on the top and bottom, you have to have more work on your plate girder than on your lattice girder.

Q. But you base your testimony on an exact, specific type of construction, that in the Flushing route, and upon a difference of $5.60, determined by the difference between lattice girder construction on the particular route, the Culver route. Now, what was the character of those particular girders that were used in Section No. 2 of Route 52, this Flushing route, do you know? A. They

1433 are plate girders.

Q. How about the number of rivets? Don't you know that the number of rivets in these simple, solid plate girders is materially less than in one of the lattice girders in which you have to rivet a lot of criss-cross pieces to hold the girder together, because it is made up of a large number of parts? A. That is the trouble with the 42nd Street structure; you haven't got the riveting areaway to get the rivets in.

The Court: Was your cost to include painting?

The Witness: Yes.

1434 The Court: You included every element that Mr. Burpee included in your price of $105.40?.

The Witness: Yes, the structure erected, ready to put the deck on.

By Mr. Nichols:

Q. You included nothing except the $5.60 and the two figures you got from the Transit Commission, the plate girder on the Flushing route, and the lattice girder construction, and you say the lattice girder construction on the Culver route cost $5.60 more, because it was a lattice girder, rather than solid. That is the only item in which you

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allowed any difference between the cost of steel or cost of construction, as between the route out there and on 42nd Street? A. Yes.

Q. Doesn't it cost more to paint these small lattice girders and their large number of component elements and parts, than it does a simple one-piece solid girder? A. No; you haven't got as much to paint, not as much area.

Q. Do you mean to say that when you break up the steel from a solid thing and make up out of a lot of small pieces, a comparatively light girder such as you have in 42nd Street, that you do not

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multiply the inside surfaces, as well as the outside surfaces—I am talking about per ton of steel, not per foot of structure—per ton? A. The painting is a very insignificant item, anyway.

Q. It is not too insignificant to prevent the fact being brought out here, that it costs more to paint per ton the lattice construction of the small, light type that they have in 42nd Street, isn't that true? A. Very little; it might cost a little more.

Q. But it does cost more? I don't want to exaggerate the amount, but I want to bring out the principle that there is something that does cost more.

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The Court: He admits it does cost a little more.

Q. Now, the Flushing route, as was the Culver route, were extensive roads, that is, they ran along for—how far was that Flushing route? A. I should say it was about a mile and a half or two miles from the Corona Station to Flushing Creek, and another piece to connect with the tunnel in Flushing for probably a quarter of a mile.

Q. You allowed nothing for the larger cost of fabricating steel, where the structure is of shorter

1438 lengths and of peculiar character, and not running along block by block for a mile or two? Now, isn't this steel constructed as a matter of fact by means of templets that are made to correspond with the steel that is used, and then by design, engineering work, to draw the design and prepare the templets and they fabricate from the templets the different pieces that make up such a structure? A. Yes, sir.

Q. Isn't it true, as in the construction of an office building, that where there is story after story
1439 that goes up, one the same as the other, the cost of designing is very much decreased, as compared wtih where you have only two stories, for instance? Now, here, you have only two blocks? A. No, I should say the cost of designing was more on the big building than the little one; you have more strains to contend with, and have more to do, more accurate figuring.

Q. But there aren't any greater strains on a light elevated structure in 42nd Street than you have on the heavy structure that takes the strain of a 50 mile per hour seven-car solid subway steel train,
1440 are there? You are arguing about the strains; there are less strains on the lighter 42nd Street elevated structure, isn't that true? A. There are less strains put in a per pound sense, because the cars are much lighter. That structure would not probably stand up for any length of time with the heavy subway cars on it.

Q. But there is this strain in 42nd Street—it is a lighter structure? A. Yes.

Q. It would not cost as much per foot or per ton to design a structure that runs along just the same, girder after girder, bay after bay, for two miles, as you state, than a structure that runs only

two blocks, as in 42nd Street—there is a difference in the initial cost, the drawing of the plans and the templets and all that, for a small job? A. Yes, the whole engineering cost would probably be less than one per cent. of the cost of the steel, and the additional cost they were put to to do these additional details would probably be less than one-tenth of one per cent., so that it doesn't amount to anything.

Q. You mean to say that the one-tenth of one per cent. would cover the cost of drawing designs for the short structure, crooked and full of bends 1442
and turns, with two terminals on it, running only 1,000 feet, you mean to tell me that in your opinion as a civil engineer the costs of designing are not in proportion much higher? A. No, it is not crooked and full of turns and bends. You have two straight lines of girders, and to provide for the cross-overs, you have cut in diagonal girders on your cross-over. There is nothing very complicated about that.

Q. At the Third Avenue end, there are two loops that run out to connect with the Third Avenue structure? A. Yes.

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Q. That is not straight, is it? A. The main structure is straight—

Q. We will start at Third Avenue; that is a connection structure with switches, isn't it? A. Yes, sir.

The Court: Mr. Nichols, do you observe that there is very little difference between your figure and the City's figure upon the cost to reproduce? There is only about $8,000, isn't that so, and it all comes down to a question of depreciation.

Mr. Nichols: I think there is a greater difference on the steel.

1444 The Court: These figures are that it would cost to reproduce $181,507, and your figures are $189,000.

Mr. Nichols: After depreciation our figures are $189,000; their figure is before depreciation.

Mr. LaMotte: As I understand it, your new structure, the cost to put it there today new, is $181,000, and the City's is higher than that.

The Court: Theirs is $189,000, but you say that omits depreciation.

Mr. Nichols: The Court has in mind that there
1445 is only $8,000 difference in the cost to reproduce new, as between our total figures and the City's—$181,000 that Mr. Brackenridge testifies to, and $189,000 that you testify to.

Mr. Burpee: The figure I testified to was the cost to reproduce, $221,056.

Q. There is a difference in the comparative cost of making a large number of small girders to reach the total tonnage, and the cost of the big girders to reach an equivalent tonnage, such as on the Culver route, and there is a larger cost of painting the larger number of small girders, because
1446 there are so many more pieces to be painted, and there is the additional engineering cost, because we have to design the structure. Now, you see there is the cross-over near Third Avenue, and there are cross-overs near Park Avenue, and there is the station at Park Avenue, with the necessity for its supports and the switches there; now, I am referring to the track as a very crooked track; it looks like a snake, and there is this and one-third of it that is straight, and the trains have to be switched from one track to another, to get in and out of the two terminals, one at each end, and the station structure at Park Avenue. Now, taking

that altogether, the design of that steel work is a very different proposition for only 1,000 feet; with all those peculiarities, than the design of the two-mile section to be built on plate girders, isn't that so? A. No, this is all straight-away work; those girders are straight; the girders aren't any more expensive to put on that angle, with the cross-overs on, than they are to put them parallel to the street.

Q. You didn't allow anything for that? A. No; if I was making the estimate to do it myself, I would not allow anything for that. 1448

Q. But the cost of designing comes upon a different element of the total cost. Now, how much does it cost to put up a travelling crane to hoist these members, one by one, the initial and necessary cost of installing the apparatus for the construction? A. A travelling crane was not necessary on that job; that was demonstrated by Harden, when he took it down with a little caterpillar crane from the street.

Q. But he had a crane that broke loose and smashed through a store front? A. There was no excuse for that. 1449

Q. You mean to say that the cheapest form of construction is not a travelling crane? Didn't they have one on the Flushing route? A. Yes, we have one when we have to put up five or six miles of road. A travelling crane is an expensive proposition.

Q. That Culver route was about 5,000 feet, was it not? A. It was more than that.

Q. I mean, the lattice girder portion, there were 6,400 tons of steel on that bed. That is about ten times this; we will make it about 4,000 feet. Isn't that about right? A. I don't remember just how

1450 many tons of lattice work there was, but they wouldn't use any more lattice than they had to; that is a foregone conclusion.

Q. But they had to use a crane to travel along and reach down into the street and pick up the members as the work progressed, and go along steadily, block by block? A. Yes, but it wasn't on the street, it was on a private roadway.

Q. And that is a much cheaper construction, where you can put your girders right down on the ground and leave them there until you pick

1451 them up? A. They had that on the street.

Q. They don't do that in 42nd Street, do they? A. Yes, they do it everywhere.

Q. In your experience in 1899, when the last main line was constructed, in those days, going into new territory, they did put the steel in the street, but can you tell me whether they put steel in streets like 42nd Street, between Park and Third Avenue? A. There is no reason why it is not the best street in the city to put an elevated road on.

Q. I am asking you whether or not they could deliver the steel and leave it along the road, so

1452 that it could be picked up by the travelling crane, bit by bit? Could they do that on 42nd Street? A. As fast as they use it, but they cannot store it there.

Q. They have to take it from the truck, don't they? A. Not necessarily from the truck; they cannot leave it for an indefinite period, but they do leave it all over the city, where they are putting up a structure. In 42nd Street, you have twice the area for the street that you have in many streets.

Q. But you never put up an elevated railroad in a street like 42nd Street, did you? A. No.

Q. You heard Mr. Harden testify as to the dif-

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ficulties of erecting the structure in the crowded traffic on 42nd Street? A. Yes.

Q. And you knew that there were requests that it be taken down because of the crowded condition of the street—the columns and so forth? A. There were.

Q. There was considerable congestion there? A. There was some congestion.

Q. Do you know that they testified before the Public Service Commission that there was a travel there at the rate of 18,000 people an hour, and that the police testified that the traffic was so dense as to be impeded and slowed up—that it is one of the most congested points in the city? A. That is not an unusual condition in the city, whether there is an elevated railroad on it or not.

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The Court: Try and answer the questions as briefly as you can.

Q. I am asking you how much it costs to put up a travelling crane on this route, such as those you have taken for your basis of valuation? A. No one would put a travelling crane up for 900 feet of elevated structure, not if he knew his business.

Q. No one would do it, because it cost so much, but how much did it cost in Flushing, or would it cost anywhere to put up the economical method of building a railroad? A. I should say about $15 or $17 a ton for erection.

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Q. What do you mean by that? A. From the dock to the street, and from the street to the structure.

The Court: There would be that additional cost?

The Witness: That would be the price to add per ton to the mill price delivered at Tidewater, New York.

1456 *City's Witness—John C. Brackenridge—Cross.*

Q. I am asking about the travelling crane.

The Court: I understood you to say it would add to the cost of the steel $17 a ton to use a crane.

The Witness: No, I said they would not use a crane at all.

The Court: Supposing they did? How much would it cost to put up and operate?

The Witness: I suppose the crane would cost five or six thousand dollars.

The Court: How much additional cost would it impose upon 42nd Street?

1457 The Witness: Nothing at all; it is cheaper to put it up the way they have it done; they have a light, portable derrick that they can reach around the street with—the structure is so low.

By Mr. LaMotte:

Q. Assuming it was absolutely necessary to erect a travelling crane in 42nd Street, to erect this structure, what would that add to the cost of steel per ton, erected?

The Court: Would it add to it, or lessen the cost?

1458 The Witness: It would add to it, whatever the travelling crane would cost.

By Mr. Nichols:

Q. When Mr. Harden was here, he was not cross examined on that point. Do you know that he used a travelling crane? A. Yes.

Q. The apparatus he put up to handle it, if he testified that it cost to put that up and take it down $2,200, and you have to spread that over the 630 tonnage of steel, doesn't that add to the cost of doing a small job? A. Did he say it cost him $2,200 to take it down?

Q. To put it up and take it down; under those conditions in 42nd Street, that is about right, isn't it? A. No, I should not say so.

Q. In such a structure as this on 42nd Street, you cannot use the economical method that you did use on the Flushing route, of a crane running along, picking up stuff on the country street, and putting it up member by member, without interruption of the work? A. Yes, you can use a more economical scheme than that is, by raising it from the street and not from the structure. The structure is so low that it is cheaper to raise it from 1460
the street than it would be to put up a crane.

Q. What is the difference in the height of the structure between that, and the railroad that runs out to Roosevelt Avenue on this Flushing route? A. Quite a difference; anywhere from five to twelve feet.

Q. Don't you know that they build the elevated railroads with a view to minimum clearance, with a clearance of 12 and 14 feet, 12 feet at the top of the grade and 14 elsewhere, which is as low as they can, in the interests of economy and safety, because the higher the structure the more it sways 1461
and the less solid it is? Don't you know from all your experience on other elevated railroads, that you always build them as low as you can? A. It depends. You have a draw-bridge there, and if you can keep it up high enough, you will save so many openings.

Q. That only relates to the swamp near Flushing, but I am speaking about this Section No. 1 on Route 52. There isn't any draw-bridge on that, it just runs through the country street from Corona, on for about a mile and a half? A. Yes.

Q. There isn't any draw-bridge there, and you

1462 use those figures, and that is just as low an elevated structure as there is anywhere in the city? A. No, it is higher, I suppose, to meet the grade of the draw-bridge going along the creek.

Q. How far from Corona is the draw-bridge? A. It isn't over half a mile from the edge of the meadow to the creek.

Q. But Section No. 1 starts at Corona, and runs along Roosevelt Avenue towards Flushing, and then after you go up a mile or so, you come to the meadows, and after you have gone another half
1463 mile across the meadows, you do have a draw-bridge, but I am talking about the route in general and this Section No. 1 in particular, where there isn't any draw-bridge, and you know the structure is just as low there as it is anywhere, and they used a travelling crane, because it is far cheaper—that is true, is't it? A. It is cheaper there, where they have several miles of structure to raise, but it is not cheaper in 42nd Street.

Q. Now, the depreciation. You heard the cross examination, or the examination in chief, I don't remember which it was, of counsel for the prop-
1464 erty owners, in which he said that the purpose of such an examination was to show that the columns and other members that were taken down, were available to be used somewhere else; that is true, isn't it? A. I didn't hear what he said.

Q. There has been some examination here along lines to bring out the fact that the man who took down the structure took it down to sell, and that it could be sold for equivalent purposes somewhere else, just as good as new; now, it is just as good as new, isn't it— those columns? A. No, I would not say it.

The Court: You place a depreciation here of

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45 per cent. upon your steel, and the claimant's expert, 20 per cent. Isn't that quite a difference between you? Why do you put your depreciation so high?

The Witness: That isn't high; that is low. That structure has been up 45 years. It is customary with structures of the type of the elevated railroad in 42nd Street, to consider the life of that structure, for purposes such as this, at 100 years, that is, one per cent depreciation.

The Court: What do you mean by 100 years—that the structure is antequated to such an extent that the steel itself has no more value?

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The Witness: It has no more value.

The Court: The steel itself?

The Witness: Yes, and that is a very small depreciation. The best engineers in the country—

The Court: How do you account for the difference between you?

The Witness: I don't think he is right on his estimate. That is the only way I can account for it.

By Mr. Nichols:

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Q. It has been there 45 years, that is half a century practically, and it is just as good as new? A. No, it is not.

Q. What is the matter with it? A. Depreciation has taken place there; it is bound to take place.

The Court: Just describe the condition of the columns. Is the depreciation perceptible?

The Witness: Yes, it is so perceptible that it has worked loose in places where the joints between the braces, and the bottom and top of the girders,—it is like a pair of scissors. Those scissors joints have loosened until they have reinforced it with a sort of little toggle. I think they have about

1468 ten tons of those things, which I have allowed them for, and it was bad construction, and it would not be necessary if the structure was not pretty well worn out.

Q. What is the matter with the columns? There is nothing loose about the columns, is there? They are there just as they were when they were put there, and just as serviceable? A. There is some depreciation of the columns; they are bound to depreciate.

Q. How have they depreciated? A. They rust
1469 off at the base where they go in the base casting, for one thing, and they have been known to be eaten nearly in two at the top of the base castings.

Q. But those are right out visible at the top of the base castings, and you didn't see any eating away there in 42nd Street—was there any eating through of those columns at 42nd Street? A. I allowed 45 per cent., and I think that represents a fair average of the whole structure, the columns and girders and all the structural steel.

Q. What is the total weight of the columns? A. Spread top columns, 110,573 pounds, and the straight top columns 20,263 pounds.

1470 Q. One kind 5½ and the other, ten tons? And how many of them are there? A. Forty-six altogether.

Q. How many are 5½ tons and how many are ten tons? A. If they were ten tons, that would make 460 tons.

Mr. LaMotte: I thought you agreed on quantity?

Mr. Nichols: This is price, not quantity.

Q. Now, how much is the total tonnage of the columns? You said the whole thing depreciated 45 per cent. How much was the weight of the columns? A. About 165 tons.

Q. More than a quarter of it is columns? A. Yes.

Q. And if the columns are intact, and are serviceable as new, assuming that, then the rest of the structure, to make up this gross 45 per cent. depreciation, must have depreciated about 60 per cent.—57½ to 60 per cent.? A. I don't admit that the columns were in any such condition.

Q. I am assuming that the columns were, for the purposes of my question, then there is a 60 per cent. depreciation on the balance? A. I say the whole thing has depreciated 45 per cent. Some columns might be depreciated more than others, but the general average of that structure is 45 per 1472 cent. in my opinion.

The Court: Were the columns depreciated somewhat more than the balance of the steel structure?

The Witness: No, I think it was uniform.

The Court: A uniform depreciation throughout, including columns?

The Witness: Yes.

Q. You don't know of a column—mention one in 45 years in elevated construction on the Manhattan elevated system, that has ever been renewed or removed? A. The Manhattan is the same as any 1473 other; you have to renew them all the way from the Battery up, where it is necessary.

Q. Do you know of a single column that has ever been removed as unserviceable? A. I do, I know of them; I can't think of them this minute, but I have taken out lots of columns that have been unserviceable.

Q. You don't know any in our structure? You cannot locate any in a main structure, unless there has been some specific change in the character of the operation, or the relation of the structure to

1474 some new use, that had to be removed—they are just as good as new, aren't they? A. No, they are not.

Q. Anything like the Pyramids, or a Medieval cathedral that has been there for hundreds of years, doesn't depreciate, does it? A. Not the Pyramids, or they would not be left today. Mr. Lindenthal, the best engineer we have in this country, says it is only a short time when they will abandon the use of steel for such structures as elevated roads, or bridges.

1475 Q. This franchise is a perpetual franchise? A. Yes.

Q. You don't know of any precedent, of any column structure being removed, or any reason why those columns there were not just as strong as they were when they were erected? A. I do know a reason.

Q. What is the reason? A. They had been there 45 years; that is reason enough.

Q. Now, the lattice girders, you say there is a depreciation there because they work loose in their motions. Now, that is something in your experience as a manager of railroad properties, that you
1476 know is kept up from time to time by repairs; you put in new bolts to tighten up connections at the girders and all through, don't you? A. A girder ought not to give away at that point; it is a sign of weakness.

Q. You don't testify that any girder on 42nd Street has given away; you merely testify that there has been a vibration, naturally, where bolts are used, and it becomes loosened, and has to be tightened up? A. It is not a bolt; it is a rivet, and is supposed to stay tight.

Q. Mr. Burpee testified that he had given the

fullest allowance for actual depreciation and for the cost of putting the structure into just the same strength and condition as when it was new. Isn't that a fair method of estimating the depreciation of a going concern that has gone on for 45 years and would go on forever as far as we know—to get at what it would cost to put it back in condition as serviceable as it was when it was new, isn't that fair? A. No, I don't think you can do it; the design of the structure is wrong. They haven't got rivet area enough to hold the structure up; it is rattley and worn and depreciated. 1478

Q. Does your depreciation of 45 per cent. extend to the whole structure? A. Yes.

Q. It extended to the rails and to every one of the elements? A. Yes.

Q. Why didn't you take the average, as Mr. Burpee did—

The Court: They didn't extend to the rails; he only made it 25 per cent on the rails.

Q. Then it did not extend to the rails? A. The structural steel; there are certain things I could make a physical inspection of, like the timbers and the rails, and those items. 1479

Q. Isn't it fair to take the average life of the different elements, whether steel, or rails or ties, to take the average life and figure the depreciation in the light of the actual age of those members, is that a fair way to do it? A. It is generally accepted that the weight of a depreciated elevated structure itself, the structural steel, is the correct way to do it, and it has been so accepted by the best engineers. The other parts of the structure that are susceptible of establishing a depreciation by inspection, such as rail, now a man that understands the rail market can go there and see if those

1480 rails are good for relaying, and if they are, they are worth much more than otherwise. I put those in as available for relaying, which is the highest price you can get for it.

Q. You looked at them, and didn't care how old they were or anything of that sort? A. I didn't care how old they were.

Q. But the main structure, as a whole, was 45 years old, and that is the only thing you cared about? A. Yes.

Q. Did you allow anything for contingencies in
1481 the construction? A. Yes.

Q. How much? A. Ten per cent.

Q. That relates to the total cost? A. Yes.

Q. Is that the same as Mr. Burpee's? A. I think he had 20 per cent., or something like that.

Q. Five per cent. is what Mr. Burpee has got; you had all our figures; and we gave them to you.

Mr. LaMotte: You two gentlemen don't agree as to what contingencies are, that is the trouble.

Q. What did you allow in the way of general overhead? A. Ten per cent. above the bare bones of the structure, in the way of material and labor.

Q. So your ten per cent. covered everything, the
1482 cost of organization, the interest during construction—did you allow anything for interest during construction? A. Yes, six per cent. for half the period of construction, which I assumed to be eight months; that is surely long enough for 900 feet of structure.

Q. Don't you know that 1,000 feet of track cannot be independently constructed, unless at the same time it is constructed as part of a railroad sufficiently extensive for practical and profitable operation? A. Yes, and then the cost of those per-

centages would be distributed over a great deal larger area, but still the percentage would remain the same, but the amount of money would be more.

Q. You know it takes more than eight months to tie up the money after you get it from the bankers, because it has to be obtained before the enterprise is initiated, and it cannot return anything upon it until the entire railroad is put in operation and begins to bring in revenue. Do you know how long that was on the Third Avenue line? A. That is not the way railroads are built. You don't get all the money necessary to build a railroad and put it in the bank and wait until you want to use it and then draw it out and pay for the different items. You get the money at the very last minute you can possibly get it. For instance, the steel order for those girders, probably they would get it on 60 days' credit anyway, and then they would wait another 60 days before they paid the bill, so they wouldn't have any interest on that. 1484

Q. That is your idea of a going concern, that it goes ahead and raises the money some time or other and it pays when it has to, with such an extension of credit as it can get, that is your theory? A. Yes, it might not pay for it for a year after it was built. 1485

Q. You have not figured on the original construction as part of the Third Avenue line? A. Yes, that is the way I figured it, and I assigned to that particular spur eight months. You don't want to charge the 42nd Street spur with interest on Third Avenue and 14th Street, for instance.

The Court: Now, you are only $65,000 apart, as I view it here. It is going to be impossible for the Court to adopt the exact figures of either side. I have to take the evidence on both sides and try

1486 and reach a conclusion. This is not the important part of this case, as I view it.

Mr. Nichols: As your Honor said, the depreciation was the big difference on this aspect of the case, and I wanted to bring out whether these items had been considered or not.

The Court: Try and make your questions a little shorter, and please answer, Mr. Witness, without going into a lecture.

Q. You considered the question of interest as a question relating just to the construction of the

1487 spur itself? A. Yes.

Q. When I used the word "contingencies," don't you know that in engineering work, that is applicable to the unforeseen, the elements in a complicated piece of work that are not before those who estimate upon its cost? A. Yes.

Q. Your ten per cent. covered various overheads, but it did not cover that element of unexpected contingencies, did it? A. No.

Q. Don't you know that the American Society of Civil Engineers, in the final report of their Committee upon the elements of cost and construction,

1488 said you could not overlook the element of contingencies in estimating the cost of reproduction of a structure any more, although you might put it at a lower figure than in the original structure?

The Court: Did you know that?

The Witness: Yes, I know that.

Q. You have taken as the basis of your testimony in regard to steel, the cost of the plate girders, and on an item also reported by the Transit Commission of $5.60 additional cost for the lattice girders. Now, in the matter of depreciation, don't you know that the Transit Commission, in the report

of the Chief Engineer on June 30th, 1922, reported these elements of overheads as follows: On track and structure only (engineering and superintendence) 8.5 per cent. of roadway costs.

Miscellaneous (including general), 2.26 of roadway costs.

Law 0.63 per cent. of roadway costs.

Debt expense 1.25 of total.

Interest during construction, 22.19, total of all items, including interest—

Mr. LaMotte: I object to it as immaterial and not proper cross examination. 1490

The Court: What Commission are you referring to?

Mr. Nichols: The Rapid Transit Commission, the one he took his figures from.

The Court: I will receive it. (To witness.) Do you understand the question?

Mr. LaMotte: Exception.

The Witness: Yes.

Q. Did you know about that? A. No.

Q. You did not look up the overheads, you only got the price of the steel? A. Yes.

Q. You did not inform yourself as to the position 1491 of the same Commission in regard to overheads on the same work? A. No, that is not the same work, the Transit Commission's overhead. They have been now for five or six years making subway plans, and they have built up an overhead of 44 per cent. of the cost of the subway, and not a spade has been put in the ground.

Q. It was in the report of the Chief Engineer of the Transit Commission in regard to elevated extensions, and this Flushing extension was an elevated railroad extension, wasn't it? A. Yes, but

1492 *City's Witness—John C. Brackenridge—Redirect.*

those percentages don't apply in this case; that is all I can say.

Q. Delaney figured in this report, that the depreciation of steel was 2/100 of one per cent. in 100 years.

Mr. LaMotte: Objected to.

The Court: Objection overuled.

Mr. LaMotte: Exception.

A. I should say he did not know anything about it.

Q. And yet Delapey let that Culver contract? A.

1493 What is that?

Q. Delaney let the Culver contract, in 1918.

The Court: Do you know whether he did or not?

The Witness: No, I don't.

Re-direct examination by Mr. LaMotte:

Q. Mr. Brackenridge, referring to the work in Flushing, is that the work from Corona to Flushing? A. Yes, sir.

Q. Did they use a travelling crane there? A. Yes.

1494 Q. Now, you had been asked about the use of a travelling crane in the construction of this spur in 42nd Street. Is it necessary to use a travelling crane for the construction of this spur? A. Absolutely not.

Q. What kind of crane ought you to use, or can you use? A. You could use the same type of crane that Harden used in taking the structure down—a little caterpillar crane on the street.

Q. And the fact that they used this travelling crane at Flushing would be more of an expense on the cost of steel or iron constructed, than this little crane, isn't that right? A. ery much more.

Q. Now, you were asked about engineers' fees on a short piece of work like in 42nd Street, as compared with the engineering fees on a long piece of work like in Flushing. You know that the 42nd Street spur is a part of the system of the elevated railroad, isn't it? A. Yes.

Q. And it was erected or constructed at the same time as the Third Avenue road running from 42nd Street south, was it not? A. Yes.

Q. And in your valuation, you have considered it as a part of a railroad system? A. Yes.

Q. Did you see Harden take down this structure? 1496
A. Yes.

Q. Did you observe how it was done? A. Yes.

Q. Did he use this travelling crane, or a small crane? A. A small caterpillar crane in the street.

Q. And can it be put up with the same kind of a crane? A. Absolutely the same.

Q. You have been asked about depreciation. What experience have you had in determining depreciation on structural steel or iron? A. I have valued over $800,000,000 worth of principally railroad property, steam and elevated and surface, and I would say in 90 per cent. of the cases where 1497
the subject of depreciation has come up, we have agreed to one per cent. a year on elevated structures and bridges of the type of an elevated structure.

Q. Were you ever on any Commission that had that in mind? A. Yes, I was on the Commission appointed by Mayor McClellan a good many years ago.

Q. For what purpose? A. For the purpose of determining depreciation.

Q. On elevated structures? A. On elevated

1498 structures and buildings and trusses and bridges and cars, and all that sort of thing.

Q. Who was on the commission with you? A. M. G. Starrett and W. Boardman Reed and E. C. M. Rand.

Q. What was their determination? A. As I recall it, we determined in that report, that the depreciation on elevated structures was one per cent. That was over 20 years ago, and it has never been disputed since. The B. R. T. accepted one per cent. depreciation.

1499 Q. You have been asked about charging certain percentages for financing. Have you had any experience in that line? A. Yes.

Q. Where? A. Getting money to build extensions to the B. R. T., and getting money for different roads I have been connected with on construction work.

Q. What was allowed so far as raising the money for capitalization? A. We considered thirty days cash, but we might buy a big generator for a power house, and it might be a year before we paid for it.

Q. Did you add percentages for the sale of the
1500 bonds, and all that sort of business? Was that customary? A. No, it was customary before 1907, but it is not possible to do it under the present Public Service Law.

Q. They have got to come out of the profits? A. They have got to come out of the earnings.

Q. You were asked about contingencies, and you were led to say on cross examination, that you did not allow for contingencies. Isn't it a fact that this ten per cent. includes contingencies? A. No, but the contingencies, as I understand he means contingencies, was in the $105 a ton. The contractor takes care of that in his bid. A contin-

gency in the sense that he means, they might strike quicksand when they come down to the foundation, and he has to go down a great deal deeper than the plan called for, and that is a contingency, and that is very often met, and in the valuation of this structure, we had the plans the structure was built on, and if there were any deep piers, we figured every cubic yard there was in the pier, some of them three or four times the amount of masonry that there would be in a standard pier. Now, that is a contingency, and it is allowed for in the price. 1502

Q. In this particular work, you had all the information as to what you would meet there? A. Absolutely everything; we have foundations that go way down to the top of the subway, about 30 feet and more than that, deep.

Q. You were asked what you observed as to the condition of this carterpillar work; is that what you call it? A. A caterpillar derrick.

Q. Explain to the Court the condition you found that structure in, in determining what the depreciation was. Just explain about what had been done to that structure to keep it going? A. At the connections between the lattice work and the bottom and top chords, the rivets had worked loose, and they did not have sufficient metal to make additional rivet holes and put in rivets without putting in more metal, so they built a sort of knuckle around the joint and patched it up in that way, and we estimated the weight of all these little patches of these loose rivets, and it amounted to over ten tons of structural steel. 1503

Q. You have added that in? A. We have added that into our estimate of the work.

Q. Did you observe any rusted condition? A.

1504 Rusted and very much in need of paint, but that has nothing to do with the condition of the structure.

Re-cross examination by Mr. Nichols:

Q. Do you know what the Transit Commission added to the cost of interest during construction, in the way of broker's fees, as part of the cost of getting the money in the recent appraisal of the elevated railroad system which they made two years ago?

1505 Mr. LaMotte: I object to the question as immaterial and irrelevant and not proper cross examination.

The Court: I will allow it.

Mr. LaMotte: Exception.

A. I read it at the time; I don't remember.

Q. They allowed interest during construction as a capital charge, and four per cent. broker's fees, didn't they—or don't you know?

Mr. LaMotte: Objected to.

The Court: Objection overruled.

Mr. LaMotte: Exception.

A. They should allow it.

1506 Mr. LaMotte: That is all with respect to the cost of reconstruction.

The Court: That covers your end of it?

Mr. LaMotte: That covers my end. Of course, that has nothing to do with the alterations at 42nd Street and Third Avenue. I have covered everything except the cost of removing those columns over to the curb. That can be put in at any stage of the case.

The Court: I am much inclined to hold that those are legal structures. I don't think we will concern ourselves with that. I think you are prac-

1507

tically complete upon this end of the case. If the case were ended, I would render my decision now on that point.

(Whereupon an adjournment was taken until Tuesday, June 3, 1924, at 10:00 A. M.)

New York, June 3rd, 1924.

TRIAL RESUMED.

Mr. LaMotte: If your Honor please, before we start taking testimony, if you will permit me, I would like to call your attention to some of the misleading statements made by the railroad in its brief filed with you, of which I just got a copy yesterday. I think I ought to do that before we proceed further with the testimony.

1508

The Court: Can't you do that in your reply brief?

Mr. LaMotte: It will only take a couple of minutes, and it may have some bearing upon the testimony that is to be produced.

The Court: All right.

Mr. LaMotte: For instance, the railroad in its brief makes the statement that the Corporation Counsel contends that no easements are taken. That is not true. The principal part of this brief filed by the railroad is to show that easements are taken. We do not dispute that. We say the abutting property owners did have easements of light, air and access in these streets, and that the railroad came along and took them from the owners, but we contend they did not get them, that is the point in our contention, what they did was to wipe them out, and what they got in the place of them was merely the right to maintain a railroad in the

1509

1510 street and be relieved from future damages from occupying that street. Again the railroad says the City therefore is now making precisely the same contention as did the elevated railroad companies prior to the Storey and Larr decision, that the acquisition of these easements involved no taking of property. That is not true. You recall that the courts held that a street railway operated along the street was not a taking of private property belonging to the abutting owners. The elevated railroad tried to invoke that same doctrine as to an
1511 elevated structure and the Storey and Larr cases decided contrary to that view. Our position here is not that the railroad did not take the abutting owners' property, but our contention is they didn't get it, what they did was to wipe it out. The easements of light, air and access cannot be conveyed separate and apart from abutting property, they can be released or extinguished, but in their nature they are not subject to conveyance, and that was held in the McKenna case, which I cited in my second little memorandum, and again in the Shepard case. This brief does not properly represent the position of the City at all.

1512 Mr. Page: I want to add one word more to Mr. LaMotte's observation about the Larr and Storey cases, which are found at page 14 of Mr. Nichols' brief, and I want to add in confirmation of what Mr. LaMotte has said that a great deal of stress is laid by the railroad company on the fact that the paper they took from the property owner purports to be a conveyance. Calling a thing a horse doesn't make it a hog or vice versa, they can call it anything; the question intrinsically is what was conveyed, and that has been explained by Mr. LaMotte, therefore these forms of release or convey-

ance amount to nothing. The point before the Court is what the situation is with regard to what was extinguished. 1513

The Court: I am not going to hear extended argument, just briefly.

Mr. Nichols: The learned Corporation Counsel said that we misrepresented. I refer to the opening sentence of the brief of the Corporation Counsel in which he said we did not take anything and the authors quoted from are Demarest and others who are never cited in any of the decisions and authorities. He said we did not take anything. 1514
I was contrasting such authorities as those with the decisions of the courts in leading cases. My brief is merely a citation of the language of the Court in the leading railroad cases, starting with the Storey, the Larr, and the others right down to the present time. They certainly did take, and if the Corporation Counsel chooses to withdraw that argument that we did not take the easements I am very glad—

Mr. LaMotte: I do not withdraw anything. I never made the contention that the railroad did not take from the property owners, but I do make 1515
the contention that while they take they don't get. The impression the railroad made in that brief was that I contended they took nothing from the abutting owners. Not at all. They can take but not get, they can destroy, that is my contention here, and it has been made plain in my memorandum I have submitted on this point.

The Court: Where are these easements in the meantime?

Mr. LaMotte: They are extinguished, out of existence.

The Court: All right, I understand your positions.

1516

FRANK D. ALLEN, recalled for further examination in behalf of the claimants, testified as follows:

Direct examination by Mr. Nichols:

Q. Did you state yesterday, Mr. Allen, in connection with the conveyances of the easements to the railroad company ordered by the Court that they with very few exceptions recited the amount paid for the fee? A. Yes.

Q. In distinction from the so-called past or rental damages? A. Yes.

1517

Q. Is there one exception in the conveyances of the 42nd Street easements? A. There is.

Q. What is that? A. I inadvertently failed to mention that exception yesterday in making a statement of the facts as they appear from the record. The property is 100 to 108 East 42nd Street, and the conveyance was executed by Julia E. Ford and others. The conveyance was executed after the affirmance of the judgment in the Court of Appeals and the judgment directs the payment or permits the payment of the sum of $77,500 with interest from April 15th, 1904, for the avoidance

1518

of the injunction or the fee. Now, the conveyance recites a consideration of one hundred and fifty-two thousand and some odd dollars. The fact is that the total amount which was paid at the time to satisfy the judgment in every respect was $181,-367.18. Now, the amount recited in the conveyance as I have stated is $152,186.11 "with interest." Now, it is apparent that the amount recited as the consideration is in excess of the amount fixed for the fee in the judgment. The amount fixed, plus interest to the date of payment, would be in the neighborhood of $90,000. I wanted to make that

1519

explanation of the facts, so that I might not be on record as having inadvertently omitted to state them.

Q. What did those judgments relate to? A. There was one judgment, but on the trial of the action, under a stipulation the property was divided into two parcels or two causes of action, as it was termed in the stipulation. The first cause of action covered a parcel commencing 64 feet one inch from Fourth Avenue or Park Avenue, running easterly 66 feet on 42nd Street with a depth of 98 feet, and the second cause of action, for the Westchester house, as it was termed in the stipulation, having a frontage of 64 feet one inch on 42nd Street and a depth of 75 feet.

1520

Mr. Nichols: That, your Honor, is part of the present Pershing Square site.

The Witness: Part of the hotel property as it existed at the time.

By the Court:

Q. What do I understand your testimony to be as to the difference between $152,000 and $181,000 really represented? A. The balance of it is what we call past damages and costs.

1521

Cross examination by Mr. LaMotte:

Q. Mr. Allen, did you make any further investigation to ascertain whether in any other case past damages were included? A. Yes, sir, and this is the exception.

Q. Only one? A. Yes, sir.

Q. Is there any difference between past damages and loss of rent or past damages based upon loss of rent; that is the element of past damages? A. Yes, sir, loss of rents.

1522

Q. There is nothing else included in those considerations except the compensation for the maintenance of the structure in the street for all future time, except this one? A. Except this one, yes, sir.

Q. Did you make any further investigation to find the condemnation proceeding? A. The papers are here in court, brought in yesterday and are in the custody of the Clerk, I believe, at the present time.

FRANK B. McCORD, called as a witness in behalf of the claimants, being duly sworn, testified

1523

as follows:

Direct examination by Mr. Nichols:

Q. Are you a member of the firm of Post & McCord? A. Yes, sir.

Q. And what is their business? A. Steel erecting and contracting.

Q. Have you erected steel for elevated railroads in the City of New York? A. Yes, sir.

Q. You have been engaged in erecting elevated railroad structures? A. Yes, sir.

Q. How recently? A. Within the last four years.

1524

Q. How much tonnage? A. We have done for the City, I should say, in the neighborhood of forty-eight to fifty thousand tons.

Q. Will you describe very briefly your experience in the erection of steel structures? A. We handle anywheres from 75 to 150,000 tons a year through our engineering department and erect it in the City of New York.

Q. Have you erected steel under conditions of heavy traffic? A. Yes, sir, we are erecting now over the New York Central tracks.

Q. Does that require special precautions against the risks and hazards of injury? A. The hazard is very, very great there.

1525

Q. You have erected more than one building in the New York Central zone? A. We have erected over five.

Q. You are familiar with the conditions in 42nd Street? A. Yes, sir.

Q. You are familiar with the conditions of steel erection on the Flushing extension? A. Yes, sir, we figured on that.

Q. You figured on it? A. Yes, sir.

Q. That Section No. 1, is there any bridge on that? A. I don't know them by number, but I live in Flushing and pass it.

1526

Q. Describe the route. A. It is on Roosevelt Avenue and it goes out to the Flushing Creek. They can haul that steel and lay it down before they ever start to put up their traveler. There is no hazard there, there is no traffic at all. The only men that would be working around there would be the men that the concern has themselves, and of course they come under the Workmen's Compensation Act, and there is no public down in there at all, there is no other mechanics on there, except their own iron men.

Q. Just describe the condition, Mr. McCord, the actual conditions. A. There is the Third Avenue line running up and down there all the time, transferring the cars going east and west, and the traffic is very heavy; you will find by observation that you have to wait to bring your steel up there and get it off the truck.

1527

Mr. LaMotte: I object to that as not responsive to any question.

Mr. Nichols: He is describing actual conditions of work there, he has done work in that zone.

The Witness: That is what you are up against.

The Court: Objection overruled.

1528 Mr. LaMotte: Exception.

Q. As to the character of the work itself, the length of the job and its relation to cost of erection, what have you to say? A. It costs so much to put up your traveller, you would have to put up 2-A track derricks there, with two engines, and then you start off—

Mr. LaMotte: I object to this line of examination. You have brought a witness here and if he is going to testify to the cost of erecting this structure or any part of it you may select, that is all
1529 right, but that is not what you are doing, you are going through a process of cross examination that I ought to do.

Mr. Nichols: You may cross examine, but please let me finish.

Mr. LaMotte: I object to the question as not proper direct examination.

The Court: There is a special rule in these cases, most of the facts are brought out on cross examination, after the witness has qualified. What do you expect to prove, the cost of erecting this steel?

1530 Mr. Nichols: It was brought out by the City, they claim to base their values in cost of erection on the cost of erection on Roosevelt Avenue. I want to show, by a man who has been on that very route and who has done an immense amount of work in the 42nd Street district, familiar with the conditions, has put 46 or 50,000 tons of elevated railroad structure and recently just what the practical conditions actually are in 42nd Street.

The Court: He may state his experience generally in that respect, and then ask what would be the cost of erecting steel in this particular structure.

1531

Q. Having regard to the actual conditions in 42nd Street, with which you are familiar, and the elements of cost peculiar to that situation with which you are familiar, what was the cost of erecting, per ton, the steel on this spur structure? A. I made an estimate of that and I figure $35 a ton.

Q. That has regard to the difference in cost of erecting the smaller, lighter members of the sort of girders that are used there? A. Yes, sir.

Cross examination by Mr. LaMotte:

1532

Q. Does that include hauling and painting? A. Yes, sir.

Q. Does it include anything else? A. It includes liability and all the rest that goes with it.

Q. What? A. The liability.

Q. What is the liability? A. The Insurance Company charges you $30 a hundred on your payroll.

Q. What else, what other items went with it? A. Your public liability, take that in up to a certain amount.

1533

Q. How much of that $35 is for the cost of erection, painting, hauling and all the items of liability you have added? A. To set your rivets there, would cost you 30 cents a piece—

The Court: From the time the steel is on the ground until it is put up, what is the cost?

Q. Independent of these extras you have added, like painting and hauling and items of liability, what is the cost of erection per ton? A. You know what our overhead is. Do you want the regular flat labor cost without any overhead?

Q. Yes? A. That would cost about $12, just for erecting it, without the rivets.

1534

By the Court:

Q. Without riveting? A. Yes, sir, and without liability.

Q. Riveting would cost how much? A. I suppose that job would run about 15 or 20 rivets to the ton.

By Mr. LaMotte:

Q. What would that cost per ton? A. I am telling you, rivets would cost 30 cents, 25 to 30 cents.

Q. How much is that a ton? A. 20 rivets to the

1535

ton.

Q. $6? A. Figure it out; you have a piece of paper, figure it out. 15 rivets to a ton.

Q. That is what I want you to do.

The Court: Take a piece of paper and figure it out.

A. 15 rivets to the ton, 30 cents, about $4.80.

Q. Did you examine this structure? A. Did I examine it?

Q. Yes. A. I was going to figure on it; I made up a figure on it.

Q. Mr. McCord, you said you made a bid on the

1536

contract for the building of the Flushing extension? A. Yes, sir. We were third bidder.

Q. Third? A. Yes.

Q. What did you bid for the cost of erection? A. As I remember, $103, and cents.

Q. $103? A. And some odd cents.

Q. Did that include every item you have included here? A. Yes, it included everything.

Q. The painting? A. Yes.

Q. The hauling? A. Yes.

Q. And the overhead? A. Oh, yes.

Q. $103? A. Yes.

1537

Q. When did you make that bid? A. A couple of months ago, I think it was.

By the Court:

Q. What was that $103 for? A. $103 a ton.

Q. Cost of steel in December? A. Putting it up, the whole thing turned over, according to plans and specifications.

Q. 1st of December? A. I don't know the date.

Mr. LaMotte: That was before we started in this case.

1538

The Witness: It was within the last three or four months.

By Mr. LaMotte:

Q. The contract was accepted at $99? A. Ninety-nine dollars and something.

Mr. Nichols: $99.80.

Q. That was in November, 1923? A. Yes.

Q. The bid that was accepted out there included the cost of painting, erecting, hauling, the overhead expense and everything else? A. Sure.

Redirect examination by Mr. Nichols:

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Q. The cost of painting, hauling and all the other expenses referred to were included in the bid that you made, and in the bid which was accepted, and in your estimate of the cost of erection in 42nd Street of just the same? A. Just the same, just exactly the same.

Q. How many hours under 42nd Street conditions would you get out of the men? A. It is a question in my mind whether you would get four out of eight hours, due to the traffic.

Recross examination by Mr. LaMotte:

Q. Is it a fact out in the Flushing section the

1540 street is unpaved and that during the winter months the men are wallowing in mud? A. They will wallow in mud, but you can throw that stuff off, it ain't to be considered in the same breath, those two jobs.

Q. The structure is much higher out in Flushing? A. That don't make any difference.

Q. It doesn't? A. No.

By the Court:

Q. What would be the cost of erecting the steel
1541 out there, have you answered that? A. $21. This here is much lighter. When you rig for it you can pick up a ten or twenty ton derrick just as easy as you can these little two by fours.

Redirect examination by Mr. Nichols:

Q. You always use a traveling derrick on these large jobs you have actually undertaken? A. Yes.

Q. That is the cheapest method? A. That is our experience.

Q. And on a short job of two blocks, that would distribute a large cost per ton? A. Yes, sir.

1542 Q. You can explain the difference between $21 and $35? A. Yes, if you want it.

GEORGE W. BURPEE, recalled for further examination in behalf of the claimants, testified as follows:

Direct examination by Mr. Nichols:

Q. Mr. Burpee, what has been your experience in determining the earning—the value of railroads, both of elevated railroads and Rapid Transit lines in New York City and elsewhere? A. At the pres-

ent time I am a member of the firm of Coverdale & Colpitts, whose specialty, you might say, is the analogies of businesses, as businesses depending upon earning power. The work that I have been connected with personally and of which I have had responsible charge consists at the present time in advice to the Manhattan Railway Company as to earning power and the fulfillment of the obligations undertaken by the Interborough Rapid Transit Company under the plan of readjustment of November 12th, 1922. This work is going on continuously and I have been engaged on it continuously since the latter part of 1921. 1544

Q. Excuse me just a moment. Your work was the basis of the Manhattan Company's position in regard to that readjustment which was afterward effected? A. In regard to the dividends, measure of dividends which they should secure on their common stock as a return for the use of their property, yes, sir.

Q. And the dividend rental is measured by the earnings of the company under the plan? A. Yes, sir.

Q. You have figured out the earnings now upon exactly the same basis that you did then for that purpose, which resulted in the reorganization? A. Using the identical principles, yes, sir. 1545

Q. Will you briefly state what experience in the determination of railway earnings your firm of Coverdale & Colpitts has had? A. The firm of Coverdale & Colpitts has acted as advisors to bondholders' committees in a great number of important railway reorganizations in the last two years including work that is now current, the Chicago & Alton, the Minneapolis & St. Paul, the

1516 Chicago, Peoria & St. Louis, the Wichita Falls, Ranger & Fort Worth, the Denver & Rio Grande Western; and work which has been completed in the past, the Chicago & Eastern Illinois, the Missouri, Kansas & Texas; also work now current, which I neglected to mention, the reorganization of the New York Railways, which has been in progress since last summer, the latter part of June. Of these railway reorganizations that I have mentioned, I have been personally responsible for the Chicago & Alton, which has taken a good part of
1517 my time for more than a year, and the New York Railways reorganization, and the Manhattan, which I have already mentioned. I am familiar with the theories used in all of the railway reorganizations in which the company has acted as advisors and have used the identical principles in determining the earning power of the spur the firm has adopted in reference to determining the earning power of any of these railroads or any of the specific parts of railroad covered by certain mortgages. Our business has also included reorganization of other properties than railroads, such as the
1548 Canada Steamship Lines, in the management of which we now participate, the Austin Machinery Company, the management of which we participate, the Connecticut Brass Company, which we manage, the Algoma Steel Corporation, the Gulf States Steel Company, in the management of which we participate. It has covered a wider range of business even than railroads and industries, as we acted as advisors to Park & Tilford in their recent disposal of their business, also in connection with a proposed theatrical merger. What I am trying to illustrate is that the principles of analogies of business from the point of view of

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earning power are well established and they are similar, the principles underlying reorganization of practically all properties are similar.

Q. In other words, you take sick businesses or railroads that have to be reorganized in periods of depression and determine the earning power, not merely on the basis of the conditions that existed at the time of the depression and reorganization, but also upon what is reasonably to be expected in the future. A. We attempt to determine the causes of the sickness, so-called, and the remedies that can be applied to make the sick business a

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profitable business, and whether it is necessary to segregate certain parts of the property or whether a change in management will result in making an unprofitable a profitable business.

Q. Applying those principles of determining the earning power of the spur in 42nd Street, have you made a study of the traffic conditions existing there and which have existed in the past, for the purpose of determining the earning value of the spur? A. Yes, sir, I have made such a study with the sole purpose of determining whether or not the spur had any earning value.

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Q. Have you prepared in condensed form a series of charts showing graphically the conditions which in your opinion determine that question? A. I have, yes, sir.

Q. And those are attached to a memorandum of so-called franchise value, that expresses among other things, the earning capacity as a principal element, perhaps, of franchise value? A. Yes, sir, they are part of that memorandum.

Q. You have the memorandum and the illustrative charts which you refer to as Exhibits A to H, inclusive? A. Yes, sir, I have.

Mr. Nichols: For the sake of avoiding confusion, I will refer to those as Exhibits A and so on, attached to the memorandum of earning value.

Mr. LaMotte: Are you going to offer them in evidence?

Mr. Nichols: Yes, but not at the present moment.

Q. Turning to the chart which is entitled Exhibit E, attached to the memorandum, have you there made a study of the traffic on the spur, the traffic at the 42nd Street and Third Avenue station, and
1553 the combined traffic, in the period both preceding the cessation of operation of the spur and following the cessation, up to the present time?

Mr. LaMotte: I object to any testimony based upon that chart until it is in evidence.

Mr. Nichols: We will mark it for identification.

The Court: Let us stop to consider here this matter from a practical standpoint. Ordinarily documents or charts of this kind are very helpful to the Court and counsel. It is simply a question of whether or not you want Mr. LaMotte to look
1554 at them and see if he would be willing to have the witness refer to them in connection with his testimony in chief.

Mr. LaMotte: Those charts must be based upon facts.

The Court: Yes, that is true.

Mr. LaMotte: Those charts must be proven in a legal way. I do not know what they show. I would not know whether the facts were true that they attempt to show, but there is one thing certain, every fact must be proved in the legal way.

The Court: There is no question about that.

Mr. Nichols: There is no question about that,

and if my friend would permit me to proceed, I would show, as I was about to, the exact facts upon which these charts are based. 1555

The Court: I make this suggestion in the interest of time. Perhaps you could reach some understanding or agreement in regard to these matters.

Mr. Nichols: The facts are in every instance the sworn reports to the Transit Commission, published by them, under their authority, public records in every instance.

The Court: Are these exhibits the result of the witness' own study of the situation? 1556

Mr. Nichols: Yes.

The Court: Proceed and have him testify generally as to what he did and what study he made, and then come to these exhibits so-called, in turn, as particular testimony is reached.

Mr. LaMotte: These charts purport to show the number of passengers who travelled during certain months and during certain years. The only proper proof of that is the records from the office, not the testimony of this witness.

The Court: That depends on what his testimony is. Did he make these observations himself? 1557

Mr. LaMotte: If he went down and examined a report in the office and comes here and testified that that report shows a certain number, that is not proper testimony, the report itself has got to be put in evidence.

The Court: How are these reports kept?

Mr. Nichols: They are kept by the Transit Commission, they are the traffic records which they publish every month, which they obtain from the various operating companies in the form of sworn statements, submitted to them as the law requires.

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Then they are published and become public documents, and it is on the basis of those figures, published in that way, those public facts, that the witness has prepared these charts, as I was about to show.

The Court: The published reports of the Transit Commission are not receivable in evidence under any particular statute, are they?

Mr. Nichols: They have always been accepted in evidence.

The Court: Strictly speaking, you have got to

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go back and get the original records, haven't you, if that is going to be required?

Mr. Nichols: If that is going to be required, but it will add enormously to the time.

Mr. LaMotte: We cannot help it. This is an important question and it has got to be done according to law. There is to be an award and assessment, whatever it is.

Mr. Nichols: My friend will have opportunity to examine these in a minute and his own expert testified exactly the same thing before the Transit Commission.

The Court: How many witnesses will be re-

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quired to authenticate these figures?

Mr. LaMotte: How many years do the charts cover?

Mr. Nichols: These charts are mostly concerned with more recent years, but they go back to show the general conditions comparable with those now existing to 1900.

Mr. LaMotte: Back to 1900?

Mr. Nichols: Yes, sir.

Mr. LaMotte: Up to the present time?

Mr. Nichols: Yes.

Mr. LaMotte: Do they take in the whole system?

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Mr. Nichols: The whole system. The 42nd Street figures will be the relevant branch of it.

Mr. LaMotte: I do not see how they are concerned with that anyway. They take in the ticket sales of the whole system, which have no relation to the spur and the Third Avenue.

By the Court:

Q. Do these all relate to the spur, Mr. Witness? A. No, your Honor, not all of them. There are certain charts which relate to the growth of traffic on the Rapid Transit lines of New York City taken as a whole. There are three or four of them that relate specifically to the spur.

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Mr. LaMotte: What have we to do with what is happening in other lines?

Mr. Nichols: It is a general survey of the transit conditions in New York, it determines by a glance the general upward trend of traffic, and then we take the Interborough lines and show what has occurred there, and then we take the Third Avenue-Manhattan Line and show just what has occurred there, then we come to the 42nd Street stations, which present a peculiar problem because the growth there is somewhat different from in the city at large, and then we take the spur station and the 42nd Street and Third Avenue station and analyze that and take the other stations on 42nd Street of the elevated lines. That presents the necessary proof and we do not know how otherwise to prove the earning value of this spur. My learned friend has laid great stress upon the fact, assuming it in his argument, that this spur is not valuable from a traffic point, earning point. We want to show that and we are challenged to do that. My friend himself has the fig-

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1564 ures here of Dr. Bauer, exactly the ones we have ourselves relied upon here, these public records. I will make no objection to their being put in and never have known any objections to be made to them. These charts are subject to scrutiny, and if there is any mistake in them, they can very readily correct it.

The Court: What is the purpose of going over the whole system?

Mr. Nichols: I thought your Honor would let this in, as in other instances, and get all the evi-

1565 dence before you, and then if on objection or study it should prove to be incompetent, you might eliminate it.

The Court: The immediate question with which we are concerned is the admissibility of these particular papers which have been produced here.

Mr. Nichols: These are illustrative, if nothing else, of the opinion of the witness.

Mr. LaMotte: But the evidence is not in. Here is a whole bunch of facts I don't know anything about. There is a way to prove them, proper way to prove them.

1566 The Court: That will require bringing many witnesses here, if you insist on the original records. That is impractical. If you insist upon the witnesses who made the original observations and entries, and then trace it down—

Mr. LaMotte: How far back do the reports filed with the transit commission go?

Mr. Nichols: The reports have been filed with the transit commission ever since its existence, prior to that it was the Public Service Commission, and then the railroad commissioners, and those are all published in their bound volumes, every single figure we have here, and very readily ac-

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cessible. Your witness, Dr. Bauer, is perfectly familiar with those facts and relies on them himself.

The Court: If this witness has personal knowledge of the general trend of transit conditions in the City, can't he testify to that from his own knowledge, and then come down to this particular Third Avenue system, of which this spur is a part, and let us deal then with the earning power of that road?

Mr. LaMotte: Let us make a suggestion. Of course, I have made, my witnesses have made an examination of traffic conditions on 42nd Street, as to the rise and fall of traffic, depending upon the installation of new lines and modes of traffic, right from 1900 down to the present time, but we have not gone into the entire system, have not considered it necessary. Now, I, of course, will produce the records and reports.

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Q. Mr. Burpee, you have made, you say, a study of the traffic conditions on the spur of the Third Avenue line, the traffic conditions in 42nd Street generally as a district having its own significance, and then of the rapid transit system generally throughout the City, and upon that you have constructed these charts illustrative of the conclusions which you have drawn. Now, the figures, where did you get the figures of traffic for that study? A. The figures which we have used for traffic were taken from the published reports of the Transit Commission up to December 31st, 1923, and subsequent to that from sworn statements made by the Interborough Rapid Transit Company to the Transit Commission, except for the last month shown here, which I believe is April, 1923, which was taken from the Interborough's preliminary statement, similar in form to

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1570 the sworn statement, which I have every reason to believe would be sworn to and presented to the Transit Commission.

Q. That is because it had not yet reached the stage in which it became a public record? A. In the routine business it had not arrived at that stage.

By Mr. LaMotte:

Q. Was that 1923 or 1924? A. 1924.

By Mr. Nichols:

1571 Q. Did you personally examine these statements and this data? A. Yes, sir.

Q. And verified in each instance each of the figures taken from the sources that you state that you have used? A. Yes, sir.

Mr. Nichols: I trust the Corporation Counsel will withdraw the demand for the technical method of proof. Your Honor will appreciate we have used the greatest diligence in endeavoring to simplify these issues and make progress.

The Court: I understand he is going to raise no objection to your statistics with respect to the 1572 traffic conditions in 42nd Street—are you?

Mr. LaMotte: We have proof of that, we have the records.

The Court: You have the records, you want to use those records yourself, so there will be no question about that. How are we going to get these facts? Unless we go to these reports, it will be impossible to get the information. It seems to me under the circumstances we ought to accept these rapid transit reports. This evidence is not going to be conclusive upon the Court.

Mr. Nichols: Any discrepancy or error can be readily pointed out by counsel.

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The Court: Yes, and in addition to that the Court will make its own observations.

Mr. LaMotte: Mr. Page has made a very good suggestion, that the witness here has made an examination of all these records, now if he states where those records are filed, what they are, the pages of them, so my witness can check them up, then we will consent to having these figures go in, subject to verification. I cannot do any more than that.

Mr. Nichols: I will do the same thing with Dr. Bauer's testimony.

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The Court: Let these figures go in subject to correction.

Mr. LaMotte: If he indicates where we can find these things to check them up—I think we know where they are, but we want the data from which he takes these figures, so we can see whether they are all right.

The Court: You can do that.

The Witness: Yes, sir. I would have to return to the office to get the page numbers and volumes.

The Court: It is not necessary to do it now.

Mr. Page: Specifically, for the benefit of all, if Mr. Burpee gives the title of the several different commissions, the name of the volume and the number of the volume and the page from which these figures are taken, we have an immediate reference which we can verify.

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The Court: That will be done.

Mr. LaMotte: To make my record straight, I object to the testimony with respect to any of the lines of traffic except the spur and the stations of all the rapid transit lines along 42nd Street. I cannot see how it is material to take in the trend of traffic on every station and at every location in the

1576 whole City of New York. It is going to make the trial burdensome and it cannot be of any benefit at all to the Court that I can see. This examination ought to be limited, it seems to me, to the 42nd Street line, that is the stations which carry passengers from 42nd Street.

The Court: And the Third Avenue too, that certainly ought to be included.

Mr. LaMotte: But to go to Ninth Avenue and to stations in the Bronx, seems to me to be absolutely immaterial and irrelevant.

1577 The Court: It seems to me there is some force in that contention. I think you probably have a right to have testimony of a general character in the record with regard to traffic conditions throughout the City generally, but to go into figures and statistics of the other lines, I do not think that is relevant and competent. It seems to me you ought to put in all your records so far as this spur is concerned, or so far as the Third Avenue line is concerned, so that we will know exactly to what extent this spur was a feeder to the Third Avenue El or any other line to which you consider it a feeder, but I do not think we are concerned with 1578 the lines on the west side of the City, except in the manner in which I have indicated.

Mr. Nichols: I am not going into the Bronx or any absurd outlying district of that kind.

The Court: Proceed, offer your records, and let us see what they show.

Mr. LaMotte: I may have an exception to the ruling.

The Court: Yes, you may have an exception so that you are protected. I suggest that this witness take these charts and we will mark them in the order in which he wishes to have them go in evi-

dence, in the order in which he wishes to discuss them. Mark the memorandum Exhibit K for Identification, and then these charts Exhibits K-1, K-2 and so on.

(The memorandum was marked Claimants' Exhibit K for Identification.)

(The charts were admitted in evidence and marked Claimants' Exhibits K-1 to K-8, inclusive.)

By Mr. Nichols:

Q. Will you describe that chart, Exhibit K-1? A. That is a diagram illustrating from 1880 to 1923, by 1580
fiscal years ended June 30th, 1923, the passengers carried per year on all rapid transit railways in the City of New York; also those carried on the Interborough Rapid Transit and the Brooklyn-Manhattan Transit as distinguished from the Hudson and Manhattan, those carried on the Interborough, both the subway and Manhattan divisions, those carried on the Brooklyn-Manhattan Transit, both the subway and elevated divisions, and those carried on the Hudson and Manhattan. In the case of the Interborough Rapid Transit, the figures start from the year ending June 30th, 1905. In the case
of the Brooklyn-Manhattan Rapid Transit, from the 1581
year ended June 30th, 1890. For the Hudson and Manhattan, for the year ended June 30th, 1908. For all the rapid transit lines in the City previous to 1900, the diagram does not show year by year the passengers carried, but simply shows the passengers carried in the year 1890, and the passengers carried in the year 1880.

By the Court:

Q. Give me in three or four words a description by which I can identify this diagram upon my min-

utes, Exhibit K-1, diagram of what years? A. 1880 to 1923.

By Mr. Nichols:

Q. Now, describe Exhibit K-2? A. That is a diagram showing the revenue passengers carried on the Interborough Rapid Transit Company from 1905 to 1923, sub-divided between the subway division and the elevated division, in which the elevated division previous to the formation of the Interborough Rapid Transit Company is shown
1583 from 1880 to 1905.

By the Court:

Q. All these are statistics showing passenger traffic on the Manhattan lines, elevated and subway? A. New York City.

Mr. LaMotte: And in Brooklyn.

Mr. Nichols: There is nothing about Brooklyn in this one.

Mr. LaMotte: In the other one there was.

Mr. Nichols: We have passed that. In 1904, when the first subway was opened competing with the Manhattan lines, which is shown here in a
1584 dotted line, the depression continued until 1910, that is the six years, when we got back again the traffic, and after that it went on until we came to the opening of the second subway, Lexington Avenue, also having a station near the spur, when the depression kept on to 1923—that is it stood at about 11, it did not go down as much as before, and now for the last year it has been going up.

By Mr. Nichols:

Q. Now, describe the next one? A. Exhibit K-3, is a chart showing ticket sales from the Third Avenue elevated line, year by year for the fiscal years 1910 to 1923.

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By the Court:

Q. Ticket sales on the Third Avenue line? A. Third Avenue elevated line, yes, sir.

By Mr. LaMotte:

Q. All the way? A. Yes, sir, the entire line known as the Third Avenue line.

Q. What years? A. 1910 to 1923.

Mr. Nichols: 1910 is the year when they got back to normal after the first subway competition.

The Court: Let us not discuss those charts now.

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Mr. LaMotte: What part of the system does this chart Exhibit K-3 cover?

Mr. Nichols: Third Avenue line.

Mr. LaMotte: From what point to what point?

The Witness: From City Hall to 125th Street, and the suburban line from 125th Street to Bronx Park, and the Third Avenue proportion of the traffic of the jointly operated line, that is the West Farms Line, which is operated jointly by the subway and Manhattan division.

By Mr. Nichols:

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Q. What is Exhibit K-4? A. The next is a chart showing the tickets sold at all rapid transit stations at 42nd Street, Manhattan, from 1900 to 1923, inclusive, fiscal years.

Q. Exhibit K-5? A. The next is a chart showing total ticket sales for 12 months ending each month from June, 1922, to April, 1923, for the station of the 42nd Street spur, the station of the Third Avenue line at 42nd Street, and the sum of the 42nd Street and Third Avenue station and the spur station.

1588 *Claimants' Witness—George W. Burpee—Direct.*

By the Court:

Q. Does that include all the stations within the condemnation area? A. It includes more, it includes the station on the main line of the Third Avenue line at 42nd Street.

Q. Exhibit K-6? A. The next is a chart showing the sales by months from January, 1922, to April, 1924, on the spur station and on the station at Third Avenue and 42nd Street, and the sum of the two.

1589 Q. What do you mean by the spur station? A. That was the one at Park Avenue and 42nd Street.

By Mr. Nichols:

Q. Now, the next one Exhibit K-7? A. The next is a chart showing the ticket sales by years from 1900 to 1923, inclusive, on the spur station, on the station at Third Avenue and 42nd Street, and the sum of the two. Exhibit K-8 is a chart showing the per cent. increase in total ticket sales by 12 months periods from June, 1923, to April, 1924, at 42nd Street stations of the Sixth, and Ninth Avenue elevated, the Second, Sixth and Ninth com-

1590 bined, the spur station, the Third Avenue station, the Second Avenue station, the spur and Third Avenue combined, and the 34th Street stations on all elevated lines.

Mr. Nichols: I offer these diagrams, K-1 to K-8, inclusive in evidence.

The Court: They are in evidence.

Q. Referring to Exhibit K-8, the last one put in evidence—

The Court: Why not take them in order?

Mr. Nichols: I will do that.

 1591

Q. Referring to Exhibit K-1, Mr. Burpee, briefly explain this diagram?

Mr. LaMotte: It seems to me these diagrams should speak for themselves.

The Court: I would not know what they meant, unless I had someone explain them to me.

A. Exhibit K-1 was prepared to show that there has been a very decided increase in traffic carried by the rapid transit lines in New York City.

By the Court:

Q. What do these marks on the diagram indi- 1592
cate? A. The figures indicate the number of passengers carried per year for each of the lines, the figures have reference for all the rapid transit railways, and for the Interborough Rapid Transt, and Brooklyn-Manhattan Transit, then for the Interborough both subway and elevated divisions, and B. M. T., and Hudson and Manhattan.

Q. Take your first line, that indicates the trend of traffic on all rapid transit lines? A. All rapid transit lines in New York City, yes, sir.

Q. And the next line, the whole Interborough Rapid Transit and Brooklyn-Manhattan Transit for the same year? A. For the same years, yes, 1593
sir.

Q. What do you mean by the Brooklyn-Manhattan Transit. A. The Brooklyn-Manhattan Transit is the new name for the old Brooklyn Rapid Transit, the B. R. T.

Q. Operated here in Manhattan? A. Both Brooklyn and Manhattan, wherever that company operates, it operates subway lines under the dual contract in Manhattan.

Q. The next line, Interborough, subway and elevated—? A. From 1905 to 1923. The next line below is for the Brooklyn-Manhattan Transit, sub-

1594 way and elevated, by years from 1900 to 1923, and figures showing the traffic in 1890, ten years previous to 1900, and the last line on the chart is the Hudson and Manhattan.

By Mr. LaMotte:

Q. That is the tube? A. That is the tube, yes, sir, which is shown from 1908 to 1923. It should be explained, as it is stated on the chart, that these are the fiscal years ended June 30th, and not calendar years.

1595 The Court: I guess that is sufficiently explained.

Mr. Nichols: May I ask just one or two questions?

The Court: Yes.

By Mr. Nichols:

Q. This is arranged year to year, except prior to 1900, where ten-year periods are used for the sake of brevity? A. That is correct, yes, sir, for the sake of brevity.

Q. I call attention to the fact that the lines are flat in that ten-year period 1890 to 1900. A. Yes, sir.

1596 Q. That includes the street surface lines, does it? A. It does not include any surface lines.

Q. During that time the street surface lines, were they being electrified? A. In that period, yes, sir.

Q. And did that affect the traffic of the so-called rapid transit lines? A. It did, it retarded the growth of rapid transit lines; in the case of the elevated, it actually caused a lessening.

Q. In that ten-year period? A. Yes, sir.

Q. Then following that on the Manhattan, was there a recovery? A. Yes, sir.

Q. Going to Exhibit K-2, will you explain briefly just what that shows? A. Exhibit K-2, the top

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line shows the passengers carried, by years, by the Interborough Rapid Transit Company, both the subway and elevated divisions, from the year 1905, to the year 1923. The second line from the top, starting from the left-hand end, that is the dotted line, shows the traffic for the elevated divisions for ten-year period, 1880 to 1890, ten-year period, 1890 to 1900, and by years from 1900 to 1923. The dashed and dotted line shows the passengers carried on the subway division for the years 1905 to 1923, all as before fiscal years. The figures representing the total number of passengers carried for each year are written on the chart.

1598

By the Court:

Q. These figures furthest to the right represent what? A. Those, your Honor, are the scale figures, it shows the horizontal line—

Q. Yes, I see.

By Mr. Nichols:

Q. For instance, the present number carried by the elevated railroad is how much? A. The passengers carried by the elevated railroad for the year ending June 30th, 1923, was 348,524,700.

1599

By the Court:

Q. And by the subway? A. By the subway, 676,650,431.

Q. Where is that figure? A. On the middle line.

Q. And what is the total subway and elevated? A. 1,025,175,131.

By Mr. Nichols:

Q. The top line, showing the total, is simply adding the two lower lines together? A. The sum of the two lower lines, yes, sir.

1600

Q. When did the effect of the first subway competition come? A. The first subway was opened in 1904 and the effect was reflected in the year ending June 30th, 1905, and subsequent years.

By the Court:

Q. The traffic increased, according to this diagram, in what year? A. In 1907.

Q. And began to drop off in 1904, according to this diagram? A. Yes.

By Mr. Nichols:

1601

Q. Exhibit K-3 briefly describe that? A. Exhibit K-3 shows the ticket sales, year by year, on all stations on the Third Avenue line, from 1910 to 1923, including the proportion of ticket sales on what are known as the jointly operated lines in the Bronx allocated to the Third Avenue line by the Transit Commission.

By the Court:

Q. And the Third Avenue line is indicated by this exhibit? A. The Third Avenue line technically is a line extending from the City Hall to

1602

Bronx Park; it also includes a certain proportion of the passengers carried on the elevated extensions in the Bronx in the jointly operated city built lines. Some of the trains on those lines use the subway, and some use the elevated division, and the Transit Commission has prescribed a method for allocating the passengers to the subway and the elevated divisions.

Q. Your chart indicates that the peak of the traffic was reached in 1917? A. 1917.

Q. Then there was a marked falling off for 1918? A. There was a marked falling off after 1918.

1603

Q. In the meantime were these east side subways built? A. The Lexington Avenue subway was opened in 1918.

By Mr. Nichols:

Q. The recovery from that has just begun? A. The recovery has just begun in the current years.

Q. 1910 was the first year in which the traffic was larger than in the preceding year following the advent of the first subway? A. I believe that is true, yes, sir. But we adopted the year 1910 for this study, from 1910 to the present time.

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Q. It shows on the preceding chart, so I need not go into it. Now, the next one? A. Exhibit K-4 shows the tickets sold at all of the rapid transit stations at 42nd Street; that includes the stations on all the elevated lines and the subway lines as well.

By the Court:

Q. On 42nd Street from one end to the other? A. From one end to the other. It does not include the railroad company operating under the Grand Central Station.

1605

Q. All street subway and elevated stations? A. Yes. This covers the period from 1900 to 1923, fiscal years, and shows year by year the total sales.

By Mr. Nichols:

Q. I ask you, Mr. Burpee, are all these yearly periods fiscal years ending June 30th? A. Yes, sir, all these charts which we have been discussing show the fiscal year ended June 30th.

Q. Is that the way the reports of the Transit Commission are published and kept? A. Yes.

Q. And you follow it for that reason? A. Yes, sir.

1606

By Mr. LaMotte:

Q. I notice in Exhibit K-3 you have run your records back to 1910, that is the ticket sales on the Third Avenue El. In these other charts you go back to 1900. Have you the record of the ticket sales along the Third Avenue El for the ten years previous to 1910? A. I have them, yes, sir. I am not sure I have them here, but I have them and can produce them.

Q. Was there any reason for leaving those off this chart? A. No, sir, no reason, except I did not consider them pertinent to the issue I was trying to determine.

1607

Mr. LaMotte: We want them.

Mr. Nichols: I will be glad to have him give them. We have them from 1900 right on one of the succeeding charts, the whole story, I am coming to it. I think if I can go on, my friend will see we have the matters he is interested in.

By Mr. Nichols:

Q. Now, the next one? A. Exhibit K-5 is made on a different basis as to periods covered. This is total ticket sales at the spur station and at the Third Avenue and 42nd Street station, and the two stations combined.

1608

By the Court:

Q. Take the spur station first, that shows for what year? A. The first figure that appears at the left hand, 1,290,100, is the ticket sales at the spur station for the 12 months' period ending June 30th, 1922.

Q. Ending then? A. Yes, sir. The next figure 1,291,480, is the number of passengers carried or ticket sales for the 12 months period ended July

1609

31st, 1922. Similarly the next figure is for the 12 months period ending August 31st, 1922, September 30th, 1922, October 31st, November 30th, December 31st and so on. In other words, each represents a twelve months period, ending the month following the previous figure. In the case of the spur those figures have been carried up to December, 1924.

Q. Does the diagram indicate that the peak of the sales was reached in November, 1923? A. It indicates that the peak of the sales was reached the first week in December, 1923, just before the

1610

title of the spur passed to the City.

Q. Then there appears to have been a marked falling off? A. That falling off is due to the cessation of the spur.

Q. Did they stop using it in December? A. December 7th, 1923. Considering the basis of construction of this chart, the figures shown in the column December, 1923, represent the total ticket sales for the year beginning January 1st, 1923, and ending December 31st. Since there were no ticket sales after December 6th, there must be a reduction in the total ticket sales for that

1611

12 months ending with December and so on for January, February, March, until we reach a period which represents a year subsequent to the cessation of the operation of the spur, when of course the ticket sales on the spur would be zero.

Q. Was there a partial suspension of the spur for a time? A. No.

Q. What indicates this gradual falling off, step by step? A. The fact that it is the basis of construction of the chart. For instance, January, in the January column—

Q. What year? A. January, 1924, the total pas-

1612 sengers carried on the spur for the 12 months ending January 31st, 1924, was 1,246,067.

Q. The spur wasn't there then? A. The spur wasn't there, and it simply means this, that beginning with February, you have in that figure the ticket sales from February to December 6th—

Q. Of what year? A. 1923, the preceding year, and consequently each month of cessation of the spur results in diminishing the figure for the twelve months shown, for each of the months in 1924, until when you reach a point a year sub-

1613 sequent to the cessation of operation of the spur, of course your ticket sales for that twelve months period was zero.

Q. You are dating it back twelve months? A. Yes, sir, twelve months; each one of these months represents the ticket sales for the twelve months period ending that month. The 12 months ending November, 1924, shows the ticket sales for that twelve month period as 25,243, which represents the tickets sold in the month of December, 1923, before the spur stopped operation.

By Mr. Nichols:

1614 Q. It is a method that is employed in your practice in determining traffic, in your experience? A. Yes, sir.

Q. It eliminates the fluctuations of month to month and gives a whole year with all the seasonal changes in each column? A. Yes, sir.

Q. Take for instance the last two months and the seven days of December—October, November and the early part of December, how much was the increase in those three months? Was it over twenty per cent.?

1615

Mr. Nichols: The next chart, No. 6, will show that, which is a monthly chart, which shows those fluctuations from month to month.

Mr. LaMotte: The chart speaks for itself.

Mr. Nichols: We are not showing a very rapid increase just before the spur was discontinued, we are taking the whole calendar year.

By the Court:

Q. Referring to Exhibit K-5 your chart indicates an upward trend of sales for the twelve months period ending June, 1922, up until the 12 months period ending November, 1923? A. Yes, sir.

1616

Q. And the upward trend, if the figures are correct, was from 1,290,000 to 1,439,000, is that right? A. Yes, sir.

Mr. Hotchkiss: The Central Union Trust Company would like to have its appearance noted by my firm as counsel, as trustee under the mortgage of the Manhattan Railway, covering the property in question. It would like to appear by Davies, Auerbach & Cornell, with permission to file the ordinary mortgagee's claim in this proceeding, so as to become a regular party to the proceeding in that way, which I will file in a few days, if that is agreeable to counsel on both sides.

1617

By the Court:

Q. You were about to take up a further explanation of Exhibit K-5; will you proceed? A. Exhibit K-5 shows also the ticket sales at the station on the Third Avenue line at 42nd Street by 12 month periods, constructed in a manner exactly similar to that described for the ticket sales on the spur station. It shows the traffic increase from the 12

1618 months ending March 30th, 1923, to November 30th, 1923, and the increase subsequent to the cessation of operation of the spur, which was first reflected in the twelve months period ending December 31st, 1923, and which becomes increasingly apparent as the months pass by up to the 12 months period ending April 30th, 1923. The line showing a normal trend is based on the increase from the twelve months, March, 1923, to November, 1923, prior to the cessation of operation of the spur.

1619 Q. Just at this point, what do the figures upon the diagram indicate with respect to the comparison between the total number of passengers carried from the spur station and the Third Avenue station and the total number on the Third Avenue station after the discontinuance of the spur? A. During the 12 months ended November 30th, 1923, there were 1,439,524 ticket sales on the spur station. During the same 12 months period there were 3,928,690 ticket sales at the station at 42nd Street and Third Avenue. During the 12 months period ending December 31st, 1923, the ticket sales at 42nd Street and Third Avenue increased to 4,-

1620 056,888, in the 12 months ending January 31st, to 4,187,605, and so on up until the 12 months ending April 30th, when they were 4,531,065, an increase much more rapid than the increase from the 12 months ending March, 1923, to November 30th, 1923. This same exhibit shows further the ticket sales by 12 months periods for the spur and the Third Avenue stations combined. The figures are the sum of the figures on the previous two charts described. For the 12 months period ending June 30th, 1922, to the 12 months period ending April 30th, 1924, there was a relatively gradual increase in traffic. From the 12 months period ending

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March 31st, 1923, to that ending November 30th, 1923, there was a remarkably uniform increase, which we have projected onward to the right and identified as normal trend. On the cessation of operation of the spur on December 7th, the number of ticket sales at these combined stations did not continue to increase at the same rate as during the preceding nine or ten months, but increased from 5,413,315 in the 12 months ending December 31st to 5,438,009 for the 12 months period ending April 30th. In other words, the line was almost flat for traffic at those two stations combined.

1622

Exhibit K-6 illustrates ticket sales by months, 1922 and 1923 and up to and including April, 1924. The lower line, identified by the yellow color, is the ticket sales on the spur itself, that is the ticket sales at the Park Avenue and 42nd Street station, which were 103,960 for the month of January, 1922, and were 123,342 for the month of November, 1923. The curve identified by the green color is the ticket sales for the same months for the station at Third Avenue and 42nd Street. The curve identified by the red color is the ticket sales at both the spur station and the 42nd Street and Third Avenue station, the ticket sales being indicated by figures written in adjacent to the line. The lines identified as normal trend, as per Exhibit E, on all three of these curves, both the yellow, the green and the red, are taken from the chart previously described, which was identified as Exhibit K-5. The green area from December, 1923, to April, 1924, indicates the gain on the Third Avenue line due to passengers who formerly used the spur, who are continuing to use the elevated by taking the trains at Third Avenue and 42nd Street. The area shaded in red indicates the esti-

1623

1624 mated number of passengers or ticket sales lost to the combined spur and the 42nd Street stations on account of the cessation of the spur.

Q. What is that loss, have you figured that out? A. Yes, sir, on the basis of the present year's traffic, we figure the loss, total passengers at 2,156,168. That is not ticket sales. We figure the loss in ticket sales at 778,400.

Q. Over what period of time? A. That would be for a full year, for the full year ending June 30th, 1924.

1625 Q. According to the proportionate loss that has appeared up to the present time? A. Yes, your Honor.

Q. What are those figures again? A. The loss in ticket sales.

Mr. LaMotte: Of Course, that is pure conclusion. I understood these charts were to represent facts and not conclusions of this witness. He is not really stating facts, but he is drawing conclusions and coloring them, which are not correct and we will show that.

The Court: It is simply based upon an estimate.

1626 Mr. Nichols: This is an expert witness, whose opinion is competent. You do not question the competency of the witness to express an opinion?

The Court: I understand they do represent facts up to the date that the exhibit was made.

The Witness: They represent facts, your Honor, as to the total ticket sales at those stations.

Mr. LaMotte: This whole trend is a conclusion, this gain is a conclusion, the loss is a conclusion, pretty nearly the whole chart is a conclusion.

The Court: You may bring all that out on cross examination. Proceed.

The Witness: Your Honor asked for a certain figure, loss of ticket sales?

The Court: Yes.

Mr. LaMotte: I would like to object to that line of testimony as being a pure conclusion on the part of this witness as to what the loss is.

The Court: Suppose you confine it to the actual loss as shown by the fiures up until the end of April, 1924. Can you do that?

Mr. LaMotte: The figures we have show a gain instead of a loss.

The Court: Those will be considered when you get them in evidence.

Mr. LaMotte: He should state the facts and let 1628
the conclusion be drawn by the Court.

Mr. Nichols: You have drawn a different conclusion, but let us have the facts.

Mr. LaMotte: Exception.

The Witness: The ticket sales at 42nd and Third Avenue at the present time are in number just as great as the ticket sales for the combined spur and Third Avenue previous to the cessation of the spur.

Q. They are just the same? A. Yes, sir.

Q. Are they in excess? A. Practically the same.

Q. In excess or lower? A. They are slightly 1629
higher. That is shown on Exhibit K-5.

Q. But your contention is that the upward trend is not so great? A. That is exactly it.

By Mr. Nichols:

Q. The trend is based upon the actual figures for the period that you have taken, the year preceding? A. Yes.

Mr. Nichols: Whether that is a correct period or not they can question, but that is the fact.

1630 *Claimants' Witness—George W. Burpee—Direct.*

By the Court:

Q. Now, the next exhibit? A. Exhibit K-7, this chart includes three curves and shows first the ticket sales for the fiscal years ending June 30th, 1900, to 1923, for the 42nd Street spur station, identified on the map by yellow. It shows the same factors for the station at Third Avenue and 42nd Street, identified by green. It shows the ticket sales for the combined two stations, identified by red. It shows an increase in the spur from 1900 from 1,413,000 passengers to 2,273,000 in 1904,
1631 1904 was the peak, and a drop in 1905 and 1906 to 996,300, or approximately 1,300,000 passengers less in 1906 than in 1904. It shows that the ticket sales on the spur station were almost constant from 1907 to 1913, when they started to increase, reaching a maximum in 1918 of 1,863,000 slightly less than in the year 1904. From 1918 they decreased year by year to a low point of 1,290,000, in 1922, and have increased in the year ending June 30th, 1923, to 1,358,383. The 42nd Street and Third Avenue station over the same years shows a corresponding increase from 1900 to 1904, but
1632 shows a loss in 1905, from 2,225,000 to 2,087,000, to use round figures, or a little less than 200,000, and fluctuates somewhat, but generally remains almost constant to 1910, and except for slight fluctuations you might say to 1915. The year ending June 30th, 1916, it begins to show an increase, and increases with a fair degree of uniformity up to the year ending 1921, when the ticket sales at that station were 3,612,000. There was a depression in 1922, but in 1923 it had recovered from the depression of 1922, and the ticket sales were 3,683,000. The combined spur and elevated station show, starting from 1900 with 2,657,000 pas-

1633

sengers, a rise at a very rapid rate to a peak in 1904 of 4,499,000 passengers, and an abrupt drop to 1907 to 3,000,000, or almost a million and a half, which, as was shown on the two previously described curves, was due very largely, almost entirely in fact to the loss on the spur. This traffic increases, with fluctuations, up to 1916, and abruptly in 1916 and 1917 to a total of 4,634,000, then more gradually to 1921 to a high of 5,082,000. In 1922 there was a loss, so that the ticket sales of the two stations were 4,732,000, but in 1923 the ticket sales had increased again to upwards of 5,000,000.

1634

By Mr. Nichols:

Q. Mr. Burpee, I call your attention to the fact that there are three sets of increases following the slump, the first one on the left beginning in 1900. The electrification of the surface was at what time? A. The electrification of the surface lines was between 1890 and 1900, in that decade.

Q. That was the time of that slump, from which the recovery began on the left of the column? A. Yes, sir.

1635

Q. Then the next one was the recovery from the slump you have stated after the first subway was opened in 1904, which ran to 149th Street, paralleling or competing with the elevated railroad.

By the Court:

Q. When were the surface lines electrified? A. Between 1890 and 1900.

Q. Why should there be an increase then from 1900 to 1904? A. The Manhattan Elevated was electrified in 1902.

1636

By Mr. Nichols:

Q. Mr. Burpee, is it true too that the effect of the competition worked itself out in the course of that ten-year period?

Mr. LaMotte: I object to that as a conclusion.

By the Court:

Q. Do you know anything about it?

Exception taken by Mr. LaMotte.

A. The electrification of the surface lines did draw traffic from the elevated lines and the electrification of the elevated subsequently drew traffic back to the elevated lines.

1637

By Mr. Nichols:

Q. I ask you whether there was any change in the character of the operation of the elevated lines at that time? A. Up to what year?

Q. I am speaking about 1913.

The Court: Up to 1915, when there was an apparent upward trend of sales?

A. Up to 1913 there was no change.

1638

By the Court:

Q. After that there was an upward trend. Was there any change in traffic conditions in the city at that time? A. There was a change in the operation of the elevated in 1916 and 1917, due to the addition of the third track and express service on the elevated lines.

By Mr. LaMotte:

Q. Didn't that go into operation in 1915? A. In January, 1916.

Q. And that shows in the fiscal year 1915, doesn't it? A. No, sir, it would show in the fiscal year end-

1639

ing June 30th, 1916, that is half of it would show in the fiscal year, and the full year in June 30th, 1917. The entire third tracking of the Third Avenue elevated did not go into operation until in July, 1917.

By Mr. Nichols:

Q. The normal line of trend and the present recovery is approximately equal to that of the preceding periods, is it? A. That is true.

Q. Now, the next chart, Exhibit K-8? A. Exhibit K-8 shows the rates of increase in total ticket 1640
sales as distinguished from actual numerical increases. This chart is similarly constructed to the charts previously described, where each month at the bottom of the sheet represents a twelve-month period ending with that date, and this covers the twelve-month period ending June 30th, 1923, to the twelve-month period ending April 30th, 1924. Starting from the bottom, the first curve shows the rates of increase over the preceding twelve months for each of the months mentioned on the 6th and 9th Avenue elevated stations at 42nd Street. The second, shown as a double line, shows the rates 1641
of increase on the 42nd Street stations of the Second Avenue, Sixth Avenue and Ninth Avenue lines. The next line shows the rate of increase of ticket sales on all elevated stations on 34th Street, that is, Second, Third, Sixth and Ninth Avenue lines. Going upward the solid line, labelled "spur station, 42nd Street" shows rates of increase in ticket sales for the station at Park Avenue and 42nd Street at the end of the spur. The next line shows the rate for the spur and the Third Avenue Elevated station at 42nd Street combined. The next, the rates of increase of ticket sales at 42nd Street and Third Avenue. The next and top line, the

1642 rates of increase in ticket sales at the station on Second Avenue at 42nd Street. It shows also similar data for the ticket sales at the subway station at Grand Central station and at Times Square station.

By the Court:

Q. Where is that indicated? A. Those are indicated by solid lines, almost horizontal. This chart shows that on the spur station at 42nd Street the increase over the corresponding period over the

1643 year before was slightly more than eleven per cent. at November 30th, 1923. That for the Third Avenue and 42nd Street spur combined it was about 12½ per cent. for the Third Avenue alone, almost thirteen per cent., and for the Second Avenue slightly less than thirteen per cent. This chart also shows the combined spur and Third Avenue ticket sales extending to the 12 months period ending April 30th, showing first an increase at a lessening rate and finally an increase at a decreasing rate. The lines indicated in red are estimated rates, based on the estimated trends shown on Exhibits pre-

1644 viously described.

The Court: That covers all the exhibits.

Mr. Nichols: Yes.

By Mr. Nichols:

Q. Referring to Exhibit K-8, I call your attention to the fact that the lines reflecting or showing the course of traffic from the Grand Central subway station to the Times Square subway station go across the lines of the elevated traffic; that is, they show a decreasing rate of increase in the subway as against the increasing rate in all the elevated stations, is that so? A. Yes, sir.

Claimants' Witness—George W. Burpee—Direct.

1645

Q. Now, will you describe very briefly the conditions under which the subways operate which compete directly with the spur at this point through the stations of the Lexington Avenue and the stations on the shuttle, which give transfer to the west side? I want you to describe those subways which directly compete at this point with the spur and with the Third Avenue line, for the record; we are all familiar with the situation, but for the purposes of the record, I would like to have some description of those subway lines, just as you have described the Third Avenue elevated line?

1646

Mr. LaMotte: I object to that.

The Court: I will allow it. It is to show the situation there. I suppose you want it to appear that there is the Lexington Avenue subway crossing 42nd Street.

Mr. Nichols: Yes, I think we ought to have a description of these matters.

Mr. LaMotte: He is asked for his conclusion.

The Court: I shall not permit him to give his conclusions. He is asked to describe the conditions there.

Mr. LaMotte: Exception.

1647

By the Court:

Q. There is an east side subway, known as the Lexington Avenue subway? A. Yes.

Q. Describe the course of that, how it connects at 42nd Street. A. The Lexington Avenue subway is in direct competition with the Third Avenue elevated from South Ferry to Gun Hill Road, or to West Farms or Bronx Park, because a passenger wanted to go to almost any point on either one of the lines, he can obtain access by either the subway or by the elevated, they are in direct competition.

1648 *Claimants' Witness—George W. Burpee—Direct.*

Q. In other words, there is a transfer point at East 149th Street? A. Yes, sir, and in some cases the lines are jointly operated, a Manhattan Division train alternates with a subway division train, so that some of the subway trains run—some portions of the line are served directly by subway trains and some portions of the line are served by Third Avenue elevated trains.

Q. You are speaking now of the elevated structure after you get out of the subway? A. Yes, your Honor.

1649 *By Mr. Nichols:*

Q. That is, beyond 149th Street the transfer point, the tracks are operated both by subway and by elevated trains, the elevated trains coming down from the West Farms Connection, so called, joining at 149th Street (down on the elevated lines, the Second and Third Avenue, and the subway trains coming down into the subway, so that from Jackson Avenue on to 241st Street the tracks are jointly operated? A. They are jointly operated, yes.

Q. When was that subway opened, the Lexington Avenue? A. The Lexington Avenue, about 1918.

1650 Q. Where are the stations in the vicininty of the former spur station on Park Avenue? A. There is a station directly connected with the Grand Central station, which is directly opposite the location of the 42nd Street spur, the whole station at Park Avenue and 42nd Street.

Q. Now, was there a subway in existence prior to that with a station in the vicinity of the spur station? A. There was a subway station there prior to the Lexington Avenue subway, but that was the original subway, which served the west side, it was competitive with the Third Avenue elevated as

1651

to points from 42nd Street south, but not as to points from 42nd Street north.

Q. Did it also connect at 149th Street with the free transfer to the elevated? A. Yes, sir, it did.

Q. It was competitive to that point? A. Yes, it was competitive as to those points.

Q. And competitive at all points except between 42nd Street and 119th Street? A. Yes, that is correct.

Q. What date did that open? A. In 1904. The operation was first started in 1904, and complete operation in 1905.

1652

Q. You testified to the slump in traffic of the spur which followed upon the opening of those two subways; how did it affect, in comparison with the effect upon the spur, the Third Avenue station down at Third Avenue and 42nd Street?

Mr. LaMotte: I object to that, that can only be shown by facts.

By the Court:

Q. As indicated on your charts, what effect did it have? A. The loss in traffic to the spur from the maximum of 1904 to 1906 in two years was approximately 1,300,000 passengers a year. The loss in passengers on the Third Avenue elevated at the 42nd Street station was in the same period about 250,000.

1653

Q. I do not quite understand that. What was that first figure you mentioned? A. 1,300,000 passengers less used or bought tickets at the 42nd Street and Park Avenue station on the spur in 1906 than bought tickets in 1904. About 200,000 less bought tickets at 42nd Street and Third Avenue than they did in 1904.

1654 *Claimants' Witness—George W. Burpee—Direct.*

By Mr. Nichols:

Q. The subway station that was opened was in the immediate vicinity of the Park Avenue spur station, was it? A. Yes, sir.

Q. How far away was the Third Avenue line, which suffered so little, in comparison? A. About 900 feet.

By the Court:

Q. The distance between Park Avenue and Third Avenue? A. Yes, sir.

1655

By Mr. Nichols:

Q. Was the situation, in respect of the comparative extent to which the spur and the Third Avenue traffic at 42nd Street was affected, the same when the second subway was opened? A. It was affected in the same way, but not to quite the same extent.

Q. It did not drop as low, but was the effect of the subway competition more apparent on the spur facilities, where the two competing stations were near rather than on the Third Avenue station, which was 900 feet distant? A. It was, yes, sir.

1656

The Court: That would indicate that after the west side subway was opened, persons who had theretofore used the Third Avenue El preferred to go up on the west side than to take the Third Avenue El.

Mr. Nichols: To some extent I think that is true.

The Court: It must have been, if there was such a falling off.

Mr. Nichols: The point is that that was where the competition hit, where the station was near, and not 900 feet away. I think that is very important.

1657

By Mr. Nichols:

Q. Is there any subway projected on the east side at the present time, I mean any plans that have been issued by the Transit Commission on the east side in this vicinity? A. Not to the best of my knowledge, no, sir.

Q. And on the west side they have approved plans, have they? A. Yes, sir.

Q. For Eighth Avenue and Sixth Avenue? A. That is my information.

Q. With stations at 42nd Street? A. Yes.

1658

Q. According to your charts, if they are correct, reflecting the actual traffic figures, there has now begun a trend similar to the previous trend upward, has there?

Mr. LaMotte: I object to that, that is clearly a conclusion.

The Court: I will ~~allow~~ it.

Mr. LaMotte: Exception.

A. There has been an increase, yes, sir.

Q. It has begun, according to your charts, assuming the correctness of the charts in reflecting the actual figures? A. It has.

1659

By the Court:

Q. You mean the trend upward has begun where, in the subway? A. No, sir, the ticket sales on the spur previous to its demolition, and on the 42nd Street station of the Third Avenue elevated, show a decided increase over the ticket sales for the previous year.

By Mr. Nichols:

Q. Now, the subway traffic, as compared with these figures which you have just mentioned on the elevated spur and the Third Avenue line, has

1660 begun to sag? A. The rate of increase expressed in percentage of the passengers carried in the previous year has; there is an increase, but the rate of increase is falling.

Q. Now, will you describe the conditions of operation from the point of view of saturation, the actual facts in regard to subway operation and capacity? A. The subway at 42nd Street, at Grand Central station and Lexington Avenue, is today certainly very crowded.

Q. Do you know, from your experience and
1661 study of the rapid transit situation and of the building of subways in New York, the period which is required for the construction of a subway?

Mr. LaMotte: I object to that question. That is absolutely immaterial, irrelevant and incompetent at this point. This witness has not been qualified to answer a question of that kind.

The Court: With respect to the first ground, how is that competent or relevant?

Mr. Nichols: Because, your Honor, there cannot be any subway built here, as we all know, for at least—

1662 The Court: Objection overruled.

Exception taken by Mr. LaMotte.

A. Not less than five years.

Q. And none is projected? A. To the best of my knowledge, and I have made every effort to determine, that is by consultation with the Transit Commission.

Q. In view of the fact that the subway rate of increase is now decreasing from whatever fact that may be due, and the elevated lines have begun to increase, based upon the facts, what is the reasonable expectation in regard to the continua-

tion of the increase of the elevated lines in the next few years before another subway can be built to compete?

Mr. LaMotte: I object to that as a question based upon assertions which have not been proven. I object upon the further ground that it is pure simple speculation.

The Court: I think it is speculative, but how are you going to get at it unless you can get the opinion of an expert?

Mr. LaMotte: Get at it from facts.

The Court: Mr. LaMotte, just keep in mind that 1664
all this witness' testimony is based upon these figures which have been introduced in evidence.

Mr. LaMotte: Not this last question.

(Question repeated by stenographer.)

The Court: You are assuming a lot of facts.

Q. Assuming the facts are correct as they appear upon the charts, what is your opinion?

Mr. LaMotte: I object to that upon the ground that any such answer would be pure speculation. Nobody can tell what is going to happen tomorrow. That is a thing for the Court to determine, based upon the facts in the case.

1665

The Court: The facts are going to be before the Court.

Mr. LaMotte: The same facts that are before this witness. He is a no better judge to pass upon the facts than you are or I am. He cannot tell tomorrow what is going to happen.

The Court: Unless he is better qualified to analyze these figures than the Court.

Mr. LaMotte: But it is not the calling for an opinion of an expert, it is calling for a prognostication into the future and nobody can do that. You have to take these facts and draw your own con-

1666 clusions. This witness is not any more qualified to pass on that than I am.

Mr. Nichols: Let me submit he is well qualified upon that, because it is the exact work he did as the basis of the readjustment of the relation between the Manhattan Railway Company, operating these very lines and the Interborough, because as part of that plant of readjustment there was a necessary estimate of the probable future earnings.

Q. How far did the probable future earnings in that plan which you yourself prepared go?

1667 Mr. LaMotte: I object to that as incompetent, irrelevant and immaterial.

The Court: What plan are you referring to?

Mr. Nichols: The plan of re-adjustment so-called, between the Interborough and Manhattan Companies.

Mr. LaMotte: We have nothing to do with that.

Mr. Nichols: He did, and he acquired this knowledge in the course of that practical business experience. I am qualifying the witness, to show in reply to Mr. LaMotte's statement that nobody could do it, that this very witness has done it and for a very practical business purpose.

1668 The Court: Bring out all the facts.

Q. What did you do on the basis of the actual facts of the traffic in determining, to the best of your judgment, the future traffic, within a limited number of years, in connection with the work of readjustment between the Manhattan and Interborough Companies that went into effect two years ago?

Mr. LaMotte: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Exception taken by Mr. LaMotte.

 1669

By the Court:

Q. When did you undertake this work? A. I have been working on the Manhattan since late in 1921, and made, for the purpose of the plan of readjustment which was finally adopted November 12th, 1922, a study of operating conditions on the elevated, and to some extent on the subway, to determine what the anticipated passenger traffic would be on the elevated lines, what the earnings would be, what the operation expenses would be and what the net earnings to the Manhattan Railway Company would be. 1670

Q. When did you take up particularly this readjustment plan about which Mr. Nichols is inquiring? A. Early in the year, 1922.

Q. What did you do in connection with that plan? A. That was just as I have stated, made a thorough study of the past traffic and past operating expenses as a basis for estimating as closely as possible what the traffic trend in the future would be, taking into consideration all the special elements of the present or the future, which would tend to make the results diverge from the results of the past. 1671

By Mr. Nichols:

Q. Based upon the facts of the traffic and of your experience in estimating the course of traffic as shown in these exhibits which have now been introduced in evidence, assuming them to be correct, have you attempted, as in connection with the reorganization plan referred to you did, an estimate to the best of your opinion of what would be the course of traffic during the next two or three years?

Mr. LaMotte: I object to it as pure speculation, fanciful, not based upon any fact whatsoever.

1672 The Court: Objection overruled.

Exception taken by Mr. LaMotte.

A. Yes, sir, I have.

Q. Now, what are the results of your study of these facts in that regard?

Mr. LaMotte: I object to that.

The Court: Ask the direct question.

Q. What, in your opinion, is the trend?

Mr. LaMotte: I object to that as incompetent, irrelevant and immaterial, pure speculation.

The Court: Objection overruled.

1673 Exception taken by Mr. LaMotte.

The Court: Limit it now to the next few years.

Mr. Nichols: I am just limiting it to the immediate future.

The Court: You are attempting to show there is going to be an upward trend of traffic?

Mr. Nichols: Yes, just the trend that is going on now as shown by these figures. I am not indulging in anything more than the facts establish.

A. We estimate that the trend—

Mr. LaMotte: It has been suggested, and I think it is a very good suggestion that this opinion which

1674 the witness is now asked is based upon the charts which have been put in evidence. Now we challenge the correctness of those charts.

The Court: They were received subject to correction and verification.

Mr. LaMotte: I think it would be a good thing if cross examination could be had to point out where he is in error, before this line of examination is entered into, and I am not prepared to do that now, that is the difficulty. I cannot cross examine this witness on those charts without a more minute study of them.

1675

The Court: Let us take the answer now and it will be taken subject to your motion to strike out later. We will adjourn until two o'clock.

At this point a recess was taken until 2 p. m.

(After Recess.)

(Continuation of the direct examination of GEORGE W. BURPEE.)

By Mr. Nichols:

1676

Q. What, on the basis of the actual figures of the Transit Commission, showing the traffic which you have stated, would be, assuming that the same increase continues as shown on your chart on the basis of those figures the traffic during the next few years on the spur?

Mr. LaMotte: I object to that as purely speculative and fanciful and not the subject of expert opinion, but if it is to be considered by the Court a matter of expert opinion, I further object on the ground that this witness is not qualified to express it. That is purely a question, if it can be asked and answered at all, for an operating engineer of a railroad.

1677

The Court: As I understand it, he is passing judgment on the figures as received from the Transit Commission, assuming that the rate of increase for the next two years would increase in the same proportion as it has increased within what time?

Mr. Nichols: That it has increased during the last year, in respect to which he gave the figures as the basis of his ratio of increase.

Mr. LaMotte: You want to prove from this witness, if he states what his charts show to be the

1678 *Claimants' Witness—George W. Burpee—Direct.*

increase for the last year or two years just to continue those up for the years you mentioned, as a mathematical calculation and say what the increase on the spur would be, is that the idea?

Mr. Nichols: Yes.

The Court: I will allow it.

Exception taken by Mr. LaMotte.

A. We estimate that the total traffic on the spur, that is ticket sales for the year ending June 30, 1924, if the spur had continued in operation, would
1679 have been 1,566,808. For the next year, ending June 30th, 1925, it would have been 1,751,718. For the year ending June 30th, 1926, 1,946,628. The year ending June 30th, 1927, 2,141,538. The year ending June 30th, 1928, 2,336,448. I did not attempt to carry it beyond five years.

Mr. LaMotte: If you kept right on for 100 years, you would have to build more than one spur.

The Court: I will take it for what it is worth.

Q. Have you, on the basis of the figures, figured out the actual ratios of increase on the 2nd Avenue station at 42nd Street for the purposes of comparison? A. Yes, sir, I have.

1680 Q. Now, what was the actual increase showed by the Transit Commission's figures, during the 11 months of January to November, calendar year, up to the time the spur was discontinued?

Mr. LaMotte: I object to that.

The Court: Isn't this all on these exhibits? What are you now seeking—just to establish the rate of progress?

Mr. Nichols: I am leading up to his opinion as to whether the ratio of increase which has taken place in the past, would apply in the future. I want to show that the same ratio of increase pre-

1681

vailed precisely as shown by the actual figures, between the 42nd Street and 2nd Avenue station just one block away, and the combined spur and Third Avenue up to the time the spur was discontinued, and that that same ratio has continued since then, slightly increased, because the ratio of increase has been continuing to increase during the last year, up to the time the spur was discontinued, and it has continued since then on 2nd Avenue.

The Court: If you are simply seeking now to place upon the record the rate of increase in percentages, as based upon these charts, I shall permit it, but it is all based upon the figures?

1682

Mr. Nichols: Absolutely, nothing else.

The Court: I will allow it.

Mr. LaMotte: Exception.

Q. The question is as to the actual rate of increase during the year 1923 up to the date of the discontinuance of the spur, shown by the Transit Commission's figures at the 42nd Street and 2nd Avenue station?

Mr. LaMotte: I object to that. I understand this is simply to figure out what these charts mathematically show. His question does not connect it with the charts at all; it connects it with reports filed with the Transit Commission by the company. Let the question relate to the figures on the chart.

1683

Q. To both; they are the same, aren't they? The figures on the chart are the figures of the Transit Commission's report, are they not? A. Yes, sir.

Mr. LaMotte: The reports of the Transit Commission are not in evidence, but the charts are. If the charts are the same as the Transit Commission's reports, a reference to the charts is just as good as to both.

The Court: Yes, I think you can base your ques-

1681 tions on the charts, because the charts have been accepted, subject to correction.

Mr. Nichols: Yes.

Q. What was the increase for the calendar year 1923 up to the date of the discontinuance of the spur, at 2nd Avenue and 42nd Street, as shown by the charts? A. From January to November, inclusive, 11 months of 1923, the ticket sales at 42nd Street and 2nd Avenue were 13 8/10ths per cent. more than they were for the corresponding 11 months of the preceding year.

1685 Q. What did the ticket sales show for the same 11 months period of the combined spur and Third Avenue? A. 13 5/10ths per. cent.

Q. A difference of 3/10ths of one per cent. for the entire period? A. Yes.

Q. Take the first six months of that period, from January to June, what do they show at 42nd Street and 2nd Avenue? A. The increase in ticket sales, January to June, 1923, over the corresponding period of the previous year, was 11 6/10ths per cent.

Q. And the combined spur and Third Avenue figures? A. 11 3/10ths per cent.

1686 Q. Again a difference of 3/10ths of one per cent.? A. Yes, sir.

Q. Take the last five months of the period, July to November, what was the rate of increase shown at 42nd Street and 2nd Avenue? A. 16 4/10ths per cent.

Q. And the combined spur and Third Avenue? A. 16 1/10ths per cent.

Q. Again a difference of 3/10ths of one per cent.? A. Yes.

Q. What, for the five months since the stopping of spur, December, 1923, up to April, 1924, according to the latest figures available, is the percentage

1687

of increase on 42nd Street and 2nd Avenue? A. 17 8/10ths per cent.

Q. And the combined spur at 3rd Avenue? A. 3 4/10ths per cent.

Q. A difference of how much? A. 14 4/10ths per cent.

Q. Now, have you the figures of the Grand Central Terminal subway station? A. Yes, sir.

Q. Now, for the 11 months? A. 9 4/10ths per cent. increase.

Q. For the first six months, the first half of the period, how much? A. 10 1/10ths per cent.

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Q. The last half, how much? A. 8 6/10ths per cent.

Q. And for the last five months, since September? A. 8 2/10ths per cent.

Q. The [illegible]s, the later periods, and the periods since the discontinuance of the spur, do they show an increase or decrease of the subway traffic? A. They show a decrease.

Q. And the combined spur and the 2nd Avenue and 42nd Street, do they show an increasing percentage of increase in the latter period? A. They show an increasing rate of increase.

1689

Q. Increasing on the elevated, and decreasing on the subway, in rate of increase? A. Yes, sir.

Mr. LaMotte: It is understood these figures are all taken from the charts?

Mr. Nichols: Absolutely.

Q. The Times Square subway, what does that show for the same periods? A. For the six months, January to June, 1923, the increase over the corresponding period of the previous year, 7 7/10ths per cent.; 11 months January to November, 7 7/10ths per cent., five months, July to November, 1923, 7 1/10th per cent.; 5 months, December, 1923, to April, 1924, 7 8/10ths per cent.

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Q. They are standing still, practically? A. Standing still.

Q. Have you, on the basis of the figures shown on the charts obtained a ratio of increase which as you have stated, you have carried forward during the next three years? What is that percentage? A. The percentage of increase which we have applied for the period from December, 1922, to April, 1923, to ascertain the increase, the numerical increase in spur passengers for this year, is 17 5/10ths per cent.

1691

Q. The actual ticket sales at the spur station, the Third Avenue station were how much in that period, December, 1922, to April, 1923? A. At the spur station?

Q. Yes, and the 3rd Avenue station? A. Combined, 2,129,631.

Q. What do those figures show as a matter of computation based upon the figures on the chart, loss in 144 days per day? A. A loss of 290,676 ticket sales.

Q. An average per day of how much? A. 1,191.

The Court: That is the combined sale of both places?

1692

The Witness: Yes, your Honor.

Q. On the basis of those figures upon the chart, what is the percentage of loss of the spur traffic? A. Based on those figures, 46 2/10ths per cent.

Q. And that, assuming the correctness of the figures, you apply to the next three years to determine the loss? A. Yes, sir, for the next three or five years.

Q. How did you determine it based on the figures? A. We used that percentage.

Q. Those are the ticket sales, are they? A. Those are ticket sales.

Q. How do the ticket sales show the actual traffic

1693

on the spur? A. The ticket sales, the total passengers riding on the spur, approximately 277 per cent. of ticket sales.

The Court: That means that there are a great many persons who ride over the spur, who do not pay a fare at that station?

The Witness: Yes, your Honor.

The Court: They come down from uptown and downtown, and transfer on to the spur, and pass over?

The Witness: Yes, your Honor.

1694

Q. Now, have actual counts been made, both by the City and the Interborough Company to determine the exact ratio between those who use the spur, and those who buy the tickets at the spur station? A. Yes, sir.

Q. What was the result of those actual counts?

The Court: So far as the railroad is concerned?

Mr. Nichols: So far as the railroad is concerned, but I am willing to put also the figures of the City in. They were used in the hearing of the Transit Commission.

Mr. LaMotte: You are asking the witness to state what they were, without any proof at all

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Mr. Nichols: Do you want me to prove them?

Mr. LaMotte: Certainly, you ought to prove them.

Mr. Nichols: I have sent for a witness to do that.

The Court: Is there any dispute about the figures? Do you want to examine the witness as to that?

Mr. LaMotte: My witness says that this witness is all wrong on the 277.

The Court: We had better have the best evidence.

Mr. Nichols: I will produce the exact evidence.

1696 Now, for the purpose of expediting matters, subject to that proof, the verification of it, shall I proceed with the witness? We simply used the percentages, just as we used them before the Transit Commission. We shall be glad to prove it and will do so in half an hour.

Mr. LaMotte: What else have you?

Mr. Nichols: I am going to the question of the actual loss of revenue on the spur.

The Court: Would you have any objection, Mr. LaMotte, to having him state what he understands
1697 the figures to be, subject to actual proof later on, for the purpose of the next question? Let us accept these figures for the purposes of the testimony.

Mr. LaMotte: All right.

Q. Upon that assumption, that those figures will be verified by competent proof, what do you figure the actual loss of traffic to the Manhattan road as a result of the discontinuance of the spur? A. We figure the loss for the current year, 1924, at the rate of 778,400 passengers.

The Court: At the rate of what?

The Witness: At the rate of 778,400 passengers.

1698 The Court: That you lose during 1924?

The Witness: During 1924, yes, at that rate.

Q. And during this period which you have covered by the application of your rate of increase derived from the figures of the chart, will you carry that computation down so far as you have carried the line based on the figures shown in the chart? A. The loss for the year ending June 30th, 1925 in ticket sales, would be approximately 867,000.

The Court: That is estimated?

The Witness: Yes, sir, estimated for 1925.

The Court: How many?

The Witness: 867,000. 1926, year ending June

1699

30th, approximately 973,000. Year ending June 30th, 1927, 1,070,000; year ending June 30th, 1928, 1,168,000, all ticket sales.

The Court: That covers it for five years. That is all you want, isn't it?

Mr. Nichols: Yes.

The Court: You mean, you are going to have an actual loss of five cents for each one of those passengers?

The Witness: You have a loss of five cents for more than this number of passengers, because this represents passengers eastbound who formerly

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bought tickets at Park Avenue and 42nd Street. This is the loss in ticket sales actually credited to the spur.

The Court: Taking into consideration the increase that you have already had at the 3rd Avenue station?

The Witness: Yes, your Honor, this is loss only.

Q. Loss of passengers, translated into nickels, how much gross for the years that you have covered?

The Court: That is a matter of computation.

A. The gross loss for the year ending June 30th,

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1924, would be $107,800.

The Court: Now, for 1925?

The Witness: For 1925, I have not extended on the same basis. I have extended it on the basis of the traffic for the year ending June 30th, 1918, and on the basis of the year ending June 30th, 1904. The traffic of June 30th, 1918, is not far from that, which at the present rate of growth would be realized in 1925, and amounts to $128,970.

The Court: 1926?

The Witness: For traffic as large as the traffic was in 1904, which at the present rate would be

1702 *Claimants' Witness—George W. Burpee—Direct.*

realized in the latter part of 1927, or the early part of 1928, $157,430. The other calculations can be easily made, but we did not extend them on that basis for each year.

Q. That is gross loss? A. Yes.

Mr. LaMotte: I want to ask you something; there must be something wrong with his testimony.

The Court: Straighten it out later on.

Q. Now, as against the gross loss of actual revenue what elements of gain in the matter of elimination of expense have you used to get at the net

1703 loss? A. The cost of operation of the spur, and cost of maintaining the spur would be entirely eliminated by its cessation, also taxes on the spur.

Q. Have you determined the cost of operation of the spur? A. Yes, sir.

Q. And how much is that?

Mr. LaMotte: I object to that, unless it is shown upon what it is based.

The Court: Yes, how does he make it up?

Q. How do you make it up?

The Court: What did you take into consideration? The cost of labor, the cost of taxes and what

1704 else?

A. The sworn reports of the Interborough Rapid Transit Company to the Transit Commission form the basis of the figure which gives the cost for each item, and the uniform classification of accounts for every item entering into the operation of the Manhattan Division. In addition to that, we got the direct cost of operating the 42nd Street spur from the Superintendent of Transportation of the Elevated Division, that is, motormen, conductors, station men and so on.

The Court: And the number of trains run?

The Witness: Yes, sir.

1705

Q. Wherever there were actual labor costs—let us have what you have got? A. $41,230.

The Court: For one year?

The Witness: For one year, yes, sir.

The Court: $41,230?

The Witness: Yes, sir.

Q. Does that figure of cost, in your opinion, apply equally to the succeeding years? A. Substantially, yes, sir.

Q. The equipment on the spur is what? A. The equipment on the spur is four cars, which are operated in trains of two cars each.

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Q. Could the capacity be increased without increasing the number of employees working on the spur? A. Yes, sir.

Q. How much? A. The employees are the same now as they were in 1904, when the maximum traffic was handled on the spur. The traffic of 1904 is slightly less than the traffic we estimate for 1928.

Q. In addition to the actual cost of operating the spur, have you added the increased cost of hauling the passengers on the 3rd Avenue? A. Yes, sir.

1707

Q. What is that addition? A. That addition for the current year is $1,020.

The Court: What is that item?

The Witness: The additional cost to the 3rd Avenue Line of hauling the passengers who have now ceased to use the spur.

Q. Have you investigated whether the removal of the spur has resulted in any difference in the number of trains run on Third Avenue? A. It has not resulted in decreasing the number of trains or cars operated on the Third Avenue Line.

Q. Have you itemized all the elements of the

1708 cost aggregating the $41,229.61 which you testified? A. Yes.

The Court: If Mr. LaMotte wants them, he will ask for them. What is the last figure you mentioned?

The Witness: $1,020.

Mr. LaMotte: As long as it is in, they might as well put in the detailed statement, subject to the objection I have made all along to the same line of testimony.

Mr. Nichols: I offer it in evidence, the sheets
1709 numbered 1, 2, 3 and 4 entitled "Cost of Operating 42nd Street Spur."

(Admitted in evidence and marked Claimants' Exhibit L.)

Mr. LaMotte: I would like to adjourn the cross examination of this witness. These maps and charts are very voluminous, and I have got to go over them before I can conduct any intelligent cross examination.

The Court: Is it possible to conduct now the general cross examination, so that you can cover some of the important features of it, reserving the right to further cross examination later on?

1710 Mr. LaMotte: The cross examination will be for the purpose of showing how misleading those charts are, that is, as misleading as we claim, but I would like, in order to conduct an intelligent examination, to go over those charts first and take them up chart by chart. This whole testimony rests upon whether they have really accurately shown a tendency upwards. If these charts are misleading and if they do not really show that there is any tendency to increase on the spur, then this testimony which follows is all without any foundation whatsoever.

1711

Mr. Nichols: There are the figures; they speak for themselves.

The Court: Is there any part of the cross examination you can go on with?

Mr. LaMotte: Nothing important; I would a great deal rather have an opportunity to finish it all at once. I think I could do it in an hour, after I go over these papers. Has the railroad any other witnesses?

Mr. Nichols: This completes our proof, with the fact that I have sent for Mr. Smith, our Superintendent of Transportation, to prove the count, and Mr. Keegan, to prove the conditions of operation on the subway. Mr. Keegan is out of town, I may say.

1712

Mr. LaMotte: You mean to say you do not intend to put in any proof as to the value of this spur as a railroad?

Mr. Nichols: This is our proof on this element of the case, as to the loss of profit. That is what determines values of course.

The Court: In other words, you contend that this proof tends to establish the value of your property as a railroad?

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Mr. Nichols: Yes, we have a perpetual franchise; we have many years of highly profitable operation before us. This case is coming up in a period of unusual depression, and we contend the figures very plainly show we are now beginning a period of recuperation.

The Court: I will give Mr. LaMotte the right to cross examine the witness tomorrow morning.

Mr. LaMotte: It is pretty short notice; if your Honor can give me a day on that, it would be preferable.

The Court: Then we understand that your cross examination is reserved. Now, call your other witness.

1714 *Claimants' Witness—Sylvester D. Smith—Direct.*

SYLVESTER D. SMITH, called as a witness on behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. Mr. Smith, what is your business? A. Superintendent of the Interborough Rapid Transit Company, Manhattan Railway Division, elevated lines.

Q. In charge of transportation?

The Court: Superintendent of the elevated

1715 lines?

The Witness: Yes, sir.

Q. You have had charge of transportation matters for how long? A. Since 1891, I have held this position.

Q. Are you familiar with the methods of making counts from time to time of the actual passengers to determine our traffic problems? A. Yes, sir.

Q. Did you have such a count made for the three days prior to the closing of the spur in 42nd Street? A. Four days, December 3rd, 4th, 5th and

1716 6th.

The Court: You conducted a count of the passengers at the spur?

The Witness: Yes, sir.

Q. And that was conducted in the manner in which you have been conducting similar counts during these years? A. Yes.

Q. Describe how that count was made? A. We had men stationed at the 3rd Avenue end of the spur, other men at the western end or Grand Central end, as we know it, and those men counted the people who came through the station past the ticket box, to board the trains to go east on the

branch. The other men counted the passengers that got off the 3rd Avenue main line trains or came from the street and rode westward on the branch.

Q. And the result? A. Do you want me to read the figures?

Q. Yes. A. On December 3rd, which was Monday, total eastbound—

The Court: Go slowly, will you please, so I can note those figures. December 3rd, eastbound?

The Witness: 6,095; westbound, total 10,239. On Tuesday, December 4th, eastbound 4,743; westbound, 9,101; December 5th, eastbound, 4,708; westbound, 8,702. 1718

Q. Is that checked up on your sheets in half-hour periods? A. Yes, sir.

Q. And you have these sheets reported to you by the employees acting under your direction? A. Yes.

The Court: There is no question raised about that, Mr. Nichols, I think. December 6th?

The Witness: December 6th, the 4th and last day: Eastbound, 4,708; westbound, 7,784.

Q. Have you the aggregate of the four days, Mr. Smith? A. I haven't added it, no. 1719

Q. You made a similar count when the matter was before the Transit Commission in 1921? A. We did.

The Court: 1921?

Mr. Nichols: Yes, 1921.

Q. Do you recall what that was? A. No, but these figures show over that.

Q. That is a larger amount of traffic? A. A larger amount of traffic; I am not positive what that figure was.

Mr. Nichols: To save time, will you admit that

1720 the witness would testify to the count given before the Transit Commission, that was made at that time, showing 296 per cent.? Do you want me to prove ours, or will you accept proof similar to what we gave before the Transit Commission?

Mr. LaMotte: What count do you refer to?

Mr. Nichols: The same count that was made for yours and the Transit Commission's hearing in 1921.

The Court: Have you got the figures here?

Mr. Nichols: Yes.

1721 The Court: Present them to Mr. LaMotte.

Mr. Nichols: Subject to correction, it showed 296 per cent. Mr. Burpee, have you got it there?

The Court: Let him look it up.

Q. Was that taken under you or by Mr. Bruce in 1921? A. All checks on passenger traffic that are taken on regular traffic checks, are taken under my direction. We have a trained number of men to do that.

Mr. Nichols: They won't admit the testimony, I will have to prove it.

The Court: The testimony is that these figures now given exceed those of the count in 1921. You

1722 may put in those figures, later, if you wish. Any cross examination?

Mr. LaMotte: No, sir, no cross examination.

Mr. Nichols: Now, if the City wants to make progress by putting their expert on—

The Court: Yes, they have rested on their branch of the case, and you have simply reserved the right of cross examination, and you may proceed.

Mr. Nichols: I have the tabulated statement of Mr. Burpee's estimates of the value of the structure, which your Honor suggested yesterday I was

1723

to have this morning. It also contains on a separate sheet, for the convenience of the Court, a comparison between the City's testimony and ours, and I understand there is no objection to my offering that in evidence. This is the tabulation similar to that of Mr. Brackenridge, of the items of the valuation. It gives the details exactly as if he were called, to save the time.

Mr. LaMotte: I have no objection; if there is anything wrong with that, I will draw it to the Court's attention.

1724

The Court: How shall we designate that?

Mr. Nichols: Valuation of structures within the condemnation area, tabulated in detail.

The Court: Tabulation of the testimony of Mr. Burpee?

Mr. Nichols: Yes, a tabulation.

The Court: You have not offered this already?

Mr. Nichols: No, because it was not ready, so as to correspond with Mr. Burpee's testimony exactly.

The Court: And what is this paper (indicating)?

1725

Mr. Nichols: That is the comparison between their expert's figures and ours, for the Court's convenience.

The Court: Does that go in as a separate exhibit?

Mr. Nichols: I think it ought to be attached to Exhibit M; it is merely a summary.

The Court: We will mark that M-1.

(The tabulation was admitted in evidence and marked Claimants' Exhibit M.)

(The comparison referred to was admitted in evidence and marked Claimants' Exhibit M-1.)

1726 LOUIS MARDER, called as a witness in behalf of the City, being duly sworn, testified as follows:

Direct examination by Mr. LaMotte:

Q. Will you state where you are employed? A. I am employed by the New York State Transit Commission.

Q. Did you bring from the files of the Commission, the monthly reports of the ticket sales made by the Interborough Rapid Transit Company to the Transit Commission and its predecessor, for
1727 the years 1919 to 1923, both inclusive? A. I did, sir.

Q. Did you also bring with you the annual report for those same years? A. Yes, sir.

Q. And have you those reports before you? A. I have, sir.

Mr. LaMotte: Now, I offer these monthly reports of the ticket sales for those years, filed with the Transit Commission by the Interborough Rapid Transit Company.

Q. How many papers are there? A. From 1919 to 1923; that is exclusive of May, 1924. I have it up to April, 1924.

1728 Q. Including April, 1924? A. Yes, sir, you might say from 1918. I have an extra year. I brought that along, although they did not need it.

Mr. Nichols: I will be very glad to have them take out what they need, just as I did.

The Court: He has brought the reports of ticket sales made by the Interborough Rapid Transit Company to the Transit Commission from when to when?

The Witness: From 1918 to April, 1924.

Mr. LaMotte: I offer them in evidence. When it comes to a question of appeal, there is no diffi-

1729

culty about picking out what is necessary. We will be able to check the correctness of these figures off those charts in this way—the only way I know.

The Witness: I might say I also have the monthly reports.

The Court: What reports did you already refer to?

The Witness: The Consolidated and the subway system as a whole, and the elevated system separate and both combined.

1730

The Court: Let us know what is being introduced here.

Mr. LaMotte: We just want the elevated—the monthly report of ticket sales on the elevated for those years.

The Court: Get them arranged there in order, so that we may see how you want them offered by years chronologically.

Mr. LaMotte: One exhibit for each year.

(The following reports were admitted in evidence and marked as follows:

Report for the year 1918—City's Exhibit 24.

Report for the year 1919—City's Exhibit 25.

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Report for the year 1920—City's Exhibit 26.

Report for the year 1921—City's Exhibit 27.

Report for the year 1922—City's Exhibit 28.

Report for the year 1923—City's Exhibit 29.

Report for four months, to April, 1924—City's Exhibit 30.)

Q. Did you bring the five annual reports? A. I did, sir.

Q. Have you got them with you? A. Yes, sir.

Mr. LaMotte: I offer these in evidence.

The Court: For the same company?

The Witness: Yes, sir, fiscal year ending 1923, for all lines—1919 to 1923 inclusive.

1732 The following reports were admitted in evidence and marked as follows:

Annual report for the year 1919—City's Exhibit 31.

Annual report for the year 1920—City's Exhibit 32.

Annual report for the year 1921—City's Exhibit 33.

Annual report for the year 1922—City's Exhibit 34.

Annual report for the year 1923—City's Ex-

1733 hibit 35.

Q. Did you bring the June monthly reports filed by the Manhattan Division of the Interborough Rapid Transit Company for the years 1919 to 1923? A. Yes, sir.

The Court: The June monthly reports?

Mr. LaMotte: Yes, sir.

Q. Have you those there? A. Yes, sir.

Mr. LaMotte: I offer these in evidence.

The Court: 1919 to 1923, inclusive?

The Witness: Yes, sir, altogether.

Q. Haven't you got them separate? A. These

1734 run from 1919 to May, and these to 1920, June,—

Mr. LaMotte: We will give them one exhibit number, including all the June reports for each of those years.

(Admitted in evidence and marked City's Exhibit 36.)

The Court: What is the purpose of offering these reports for a particular month?

Mr. LaMotte: They contain a report as to special revenues obtained from the spur, independent of the ticket revenues.

Q. Did you bring with you an exhibit which was offered in evidence before the hearing before the Public Service Commission in Case No. 2582, which had reference to this spur? A. I did not, sir.